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International Court of Justice

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NUREMBERG, GERMANY, ON 26 JULY 1946, 1000 - 1700, LORD JUSTICE LAWRENCE PRESIDING.

THE PRESIDENT: I call on the Chief Prosecutors, the United States of America.

THE MARSHAL: May it please the Tribunal, the Defendant Hess is absent.

MR. JUSTICE JACKSON: Mr. President and Members of the Tribunal:

An advocate can be confronted with few more formidable tasks than to select his closing arguments where there is great disparity between his appropriate time and his available material. In eight months -- a short time as state trials go -- we have introduced evidence which embraces as vast and varied a panorama of events as has ever been compressed within the framework of a litigation. It is impossible in summation to do more than outline with bold strokes the vitals of this trial's mad and melancholy record, which will live as the historical text of the Twentieth Century's shame and depravity.

It is common to think of our own time as standing at the apex of civilization, from which the deficiencies of preceding ages may patronizingly be viewed in the light of what is assumed to be "progress." The reality is that in the long perspective of history the present century will not hold an admirable position, unless its second half is to redeem its first. These two-score years in this Twentieth Century will be recorded in the book of years as one of the most bloody in all annals. Two World Wars have left a legacy of dead which number more than all the armies engaged in any war that made ancient or medieval history. No half-century ever witnessed slaughter on such a scale, such cruelties and inhumanities, such wholesale deportations of peoples into slavery, such annihilations of minorities. The terror of Torquemada pales before the Nazi Inquisition. These deeds are the overshadowing historical facts by which generations to come will remember this decade. If we cannot eliminate the causes and prevent the repitition of these barbaric events, it is not an irresponsible prpphecy to say that this Twentieth Century may yet succeed in bringing the doom of civilization.

Goaded by these facts, we have moved to redress the blight on the record

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of our era. The defendants complain that our pace is too fast. In drawing the Charter of this Tribunal, we thought we were recording an accomplished advance in International Law. But they say that we have outrun our times, that we have anticipated an advance that should be, but has not yet been made. The Agreement of London, whether it originates or merely records, at all events marks a transition in International Law which roughly corresponds to that in the evolution of local law when men ceased to punish local crime by "hue and cry" and began to let reason and inquiry govern punishment. The society of nations has emerged from the primitive "hue and cry", the law of "catch and kill." It seeks to apply sanctions to enforce International Law, but to guide their application by evidence, law, and reason instead of outcry. The defendants denounce the law under which their accounting is asked. Their dislike for the law which condemns them is not original. It has been remarked before that -

"No thief ere felt the halter draw
With good opinion of the law."

I shall not labor the law of this case. The position of the United States was explained in my opening statement. My distinguished colleague, the Attorney General of Great Britain, will reply on behalf of all the Chief Prosecutors to the defendants' legal attack. At this stage of the proceedings, I shall rest upon the law of these crimes as laid down in the Charter. The defendants, who except for the Charter would have no right to be heard at all, now ask that the legal basis of this trial be nullified. This Tribunal, of course, is given no power to set aside or modify the Agreement between the Four Powers, to which eighteen other nations have adhered. The terms of the Charter are conclusive upon every party to these proceedings.

In interpreting the Charter, however, we should not overlook the unique and emergent character of this body as an International Military Tribunal. It is no part of the constitutional mechanism of internal justice of any of the signatory nations. Germany has unconditionally surrendered, but no peace treaty has been signed or agreed upon. The Allies are still technically in a state of war with Germany, although the enemy's political and military

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institutions have collapsed. As a Military Tribunal, this Tribunal is a continuation of the war effort of the Allied nations. As an International Tribunal, it is not bound by the procedural and substantive refinements of our respective judicial or constitutional systems, nor will its rulings introduce precedents into any country's internal system of civil justice. As an International Military Tribunal, it rises above the provincial and transient and seeks guidance not only from International Law but also from the basic principles of jurisprudence which are assumptions of civilization and which long have found embodiment in the codes of all nations.

Of one thing we may be sure. The future will never have to ask, with misgiving, What could the Nazis have said in their favor. History will know that whatever could be said, they were allowed to say. They have been given the kind of a trial which they, in the days of their pomp and power, never gave to any man.

But fairness is not weakness. The extraordinary fairness of these hearings is an attribute of our strength. The prosecution's case, at its close, seemed inherently unassailable because it rested so heavily on German documents of unquestioned authenticity. But it was the weeks upon weeks of pecking at this case by one after another of the defendants that has demonstrated its true strength. The fact is that the testimony of the defendants has removed any doubts of guilt which, because of the extraordinary nature and magnitude of these crimes, may have existed before they spoke. They have helped write their own judgment of condemnation.

But justice in this case has nothing to do with some of the arguments put forth by the defendants or their counsel. We have not previously and we need not now discuss the merits of all their obscure and tortuous philosphy. We are not trying them for the possession of obnoxious ideas. It is their right, if they choose, to renounce the Hebraic heritage in the civilization of which Germany was once a part.

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Nor is it our affair that they repudiated the Hellenic influence as well. The intellectual bankruptcy and moral perversion of the Nazi regime might have been no concern of International Law had it not been utilized to goose-step the Herrenvolk across international frontiers. It is not their thoughts, it is their overt acts which we charge to be crimes. Their creed and teachings are important only as evidence of motive, purpose, knowledge and intent.

We charge unlawful aggression but we are not trying the motives, hopes, or frustrations which may have led Germany to resort to aggressive war as an instrument of policy. The law, unlike politics, doesnot concern itself with the good orevil in the status quo, nor with the merits of thegrievances against it. It merely requires that the status quo be not attacked by violent means and that policies be not advanced by war. We may admit that overlapping ethnological and cultural groups, economic barriers, and conflicting national ambitions created in the 1930's, as they will continue to create, grave problems for Germany as well as for the other peoples of Europe. We may admit too that the world had failed to provide political or legal remedies which would be honorable and acceptable alternatives to war. We do not underwrite either the ethicsor the wisdom of any country, including my own, in the face of these problems. But we do say that it isnow, as it wasfor sometime prior to 1939, illegal and criminal for Germany or any other nation to redress grievances or seek expansion by resort to aggressive war.

Let me emphasize one cardinal point. The United States has no interest which would be advanced by the conviction of any defendant if we have not proved him guilty on at least one of the counts charged against him in the indictment. Any result that the calm and critical judgment of posterity would pronounce unjust, would not be a victory for any of the countries associated in this prosecution. But in summation we now have before us the tested evidences of criminality and have heard the flimsy excuses and paltry evasions of the defendants. The suspended jusgment with which we opened this case is no longer appropriate. The time has come for final judgment and if the case I present seems hard and uncompromising, it is because the evidence makes it so.

I perhaps can do no better service than to try to lift this case out of the morass of detail with which the record is full and put before you only

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the bold outlines of a case that is impressive in its simplicity. True, its thousands of documents and more thousands of pages of testimony deal with an epoch and cover a continent, and touch almost every branch of human endeavor. They illuminate specialities, such as diplomacy, naval development and warfare, land warfare, the genesis of air warfare, the politics of the Nazi rise to power, the finance and economics of totalitarian war, sociology, penology, mass psychology, and mass pathology. I must leave it to experts to comb the evidence and write volumes on their specialities, while I picture in broad strokes the offenses whose acceptance as lawful would threaten the continuity of civilization. I must, as Kipling put it, "splash at a ten-league canvas with brushes of comet's hair."

THE CRIMES OF THE NAZI REGIME

The strength of the case against these defendants under the conspiracy count, which it is the duty of the United States to argue, is in its simplicity. It involves but threeultimate inquiries: First, have the acts defined by the Charter as crimes been committed; second, were they committed pursuant to a common plan or conspiracy; third, are these defendants among those who are criminally responsible?

The charge requires examination of a criminal policy, not of a multitude of isolated, unplanned, or disputed crimes. The substantive crimes upon which we rely, either as goals of a common plan or as means for its accomplishment, are admitted. The pillars which uphold the conspiracy charge may be found in five groups of overt acts, whose character and magnitude are important considerations in appraising the proof of conspiracy.

1. The Seizure of Power and Subjugation of Germany to a Police State.

The Nazi Party seized control of the German state in 1933. "Seizure of power" is a characterization used by defendants and defense witnesses, and so apt that it has passed into both history and every-day speech. (I)

The Nazi junta in the early dayslived in constant fear of overthrow. Goering, in 1934, pointed ut that its' enemies were legion and said:

> "Therefore, the concentration camps have been created, where we have first confined thousands of Communists and Social democrat functionaries." (2)

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In 1933 Goering forecast the whole program of purposeful cruelty and oppression when he publicly announced:

> "Whoever in the future raises a hand against a representative of the National Socialist movement or of the state must know that he will lose his life in a very short while." (3)

New political crimes were created to this end. It was made a treason, punishable with death, to organize or support a political party other than the Nazi Party. (4) Circulating a false or exaggerated statement, or one which would harm a state or even the Party, was made a crime. (5) Laws were enacted of such ambiguity that they could be used to punish almost any innocent act. It was, for example, made a crime to provoke "any act contrary to the public welfare." (6)

The doctrine of punishment by analogy was introduced to enable conviction for acts which no statute forbade. (7) Minister of Justice Guertner explained that National Socialism considered every violation of the goals of life which the community set up for itself to be a wrong per se, andthat the act could be punished even though it was not contrary to existing "formal law." (8)

The Gestapo and the SD were instrumentalities of an espionage system which penetrated public life and private life. (9) Goering controlled a personal wire-tapping unit. (10) All privacy of communication was abolished. (11) Upon the strength of this spying individuals were dragged off to "protective custody" and to concentration camps without legal proceedings of any kind, (13) and without statement of any reason therefor. (14) The partison political police wereexempted from effective legal responsibility for their acts. (15)

With all administrative offices in Nazi control and with the Reichstag reduced to impotence, the judiciary remained the last obstacle to this reign of terror. (16) But its independence was soon overcome and it was reorganized to dispense a venal justice. (17) Judges were ousted for political or racial reasons and were speid upon and put under pressure to join the Nazi party. (18) After the Supreme Court had acquitted three of the four men whom the Nazis accused of setting the Reichstag fire, its jurisdiction over treason cases

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was transferred to a newly established "People's Court" consisting of two judges and five party officials.(19) The German film of this "People's Court" in operation, which we showed in this chamber, revealed its presiding judge pouring partisan abuse upon speechless defendants.(20) Special courts were created to try political crimes, only party members were appointed judges, (21) and "Judges letters" instructed the puppet judges as to the "general lines" they must follow.(22)

The result was the removal of all peaceable means either to resist or to change the government. Having sneaked through the portals of power, the Nazis slammed the gate in the face of all others who might also aspire to enter. Since the law was what the Nazis said it was, every form of opposition was rooted out and every dissenting voice throttled. Germany was in the clutch of a police state, which used the fear of the concentration camp as a means to enforce non-resistance. The Party was the State, the State was the Party, and terror by day and death by night were the policy of both.

2. The Preparation and Waging of Wars of Aggression.

From the moment the Nazis seized power, they set about feverish but stealthy efforts, in defiance of the Versailles Treaty, to arm for war. In 1933 they found no airforce. By 1939 they had 21 squadrons, consisting of 240 echelons or about 2,400 first-line planes, together with trainers and transports. In 1933 they found an army of 3 infantry and 3 cavalry divisions. By 1939 they had raised and equipped an army of 51 divisions, four of which were fully motorized and four of which were panzer divisions. In 1933 they found a navy of one cruiser and 6 light cruisers. By 1939 they had built a navy of 4 battleships, 1 aircraft carrier, 6 cruisers, 22 destroyers, and 54 submarines. They had also built up in that period an armament industry as efficient as that of any country in the world.(23)

These new weapons were put to use, commencing in September 1939, in a series of undeclared wars against nations with which Germany had arbitration and non-aggressiontreaties, and in violation of repeated assurances.(24) On September 1, 1939, this rearmed Germany attacked Poland. The following April witnessed the invasion and occupation of Denmark and Norway, and May saw the overrunning of Belgium, the Netherlands, and Luxembourg. Another Spring saw Yugoslavia and Greece under attack, and in June 1941 came the

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invasion of Soviet Russia. Then Japan, which Germany had embraced as a partner, struck without warning at Pearl Harbor in December 1941 and four days later Germany declared war on the United States.

We need not trouble ourselves about the many abstract difficulties that can be conjured up about what constitutes aggression in doubtful cases.

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I shall show you, in discussing the conspiracy, that by any test ever put forward by any responsible authority, by all the canons of plain sense, these were unlawful wars of aggression in breach of treaties and in violation of assurances.

The third group of crimes was: Warfare in Disregard of International Law.

It is unnecessary to labor this point on the facts. Goering asserts that the Rules of Land Warfare were obsolete, that no nation could fight a total war within their limits.(25) He testified that the Nazis would have denounced the Conventions to which Germany was a party, but that General Jodl wanted captured German soldiers to continue to benefit from their observance by the Allies. (26)

It was, however, against the Soviet people and Soviet prisoners that Teutonic fury knew no bounds, in spite of a warning by Admiral Canaris that the treatment was in violation of International Law. (27)

We need not, therefore, for the purposes of the Conspiracy count, recite the revolting details of starving, beating, murdering, freezing, and mass extermination admittedly used against the eastern soldiery. Also, we may take as established or admitted that the lawless conduct such as shooting British and American airmen, mistreatment of Western prisoners of war, forcing French prisoners of war into German war work, and other deliberate violations of the Hague and Geneva Conventions, did occur, and in obedience to hightest levels of authority.(28)

The fourth group of crimes is: Enslavement and Plunder of Populations in Occupied Countries.

The defendant Sauckel, Plenipotentiary General for the Utilization of Labor,(29) is authority for the statement that "out of five million foreign workers who arrived in Germany, not even 200,000 came voluntarily."(30) It was officially reported to defendant Rosenberg that in his territory "recruiting methods were used which probably have their origin in the blackest period of the slave trade."(31) Sauckel himself reported that male and female agents went hunting for men, got them drunk, and "shanghaied" them to Germany.(32) These captives were

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shipped in trains without heat, food, or sanitary facilities. The dead were thrown out at stations, and the newborn were thrown out the windows of moving trains. (33)

Sauckel ordered that "all the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure". (34) About two million of these were employed directly in the manufacture of armaments and munitions. (35) The director of the Krupp Locomotive factory in Essen complained to the company that Russian forced laborers were so underfed that they were too weakened to do their work, (36) and the Krupp doctor confirmed their pitiable condition, (37) Soviet workers were put in camps under Gestapo guards, who were allowed to punish disobedience by confinement in a concentration camp or by handing on the spot.(38)

Populations of occupied countries were other wise exploited and oppressed unmercifully. Terror was the order of the day. Civilians were arrested without charges, committed without counsel, executed with hearing. Villages were destroyed, the male inhabitants shot or sent to concentration camps, the women sent to forced labor, and the children scattered abroad.(39) The extent of the slaughter in Poland alone was indicated by Frank, who reported, and I quote:

> "If I wanted to have a poster put up for every seven Poles who were shot, the forests of Poland would not suffice for producing the paper for such posters." (40)

Those who will enslave men cannot be expected to refrain from plundering them. Boastful reports show how thoroughly and scientifically the resources of occupied lands were sucked into the German war economy, inflicting shortage, hunger, and inflation upon the inhabitants. (41) Besides this grand plan to aid the German war effort there were the sordid activities of the Rosenberg Einsatzstab, whihc pillaged art treasures for Goering and his fellow-bandits. (42) It is hard to say whether the spectable of Germany's No. 2 leader urging his people to give up every comfort and strain every sinew on essential war work while he rushed around confiscating art by the

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trainload should be cast as tragedy or comedy. In either case it was a crime.

International Law at all times before and during this war spoke with prevision and authority respecting the protection due civilians of an occupied country, (43) and the slave trade and plunder or occupied countries was at all times flagrantly unlawful.

And the fifth group of crimes is: Persecution and Extermination of Jews and Christians.

The Nazi movement will be of evil memory in history because of its persecution of the Jews, the most far-flung and terrible racial persecution of all time. Although the Nazi party neither invented nor monopolized anti-Semitism, its leaders from the very beginning embraced it, incited it, and exploited it. They used it as "the psychological spark that ignites the mob." After seizure of power, it became an official state policy. The persecution began in a seriies of discriminatory laws eliminating the Jews from the civil service, the professions, and economic life. As it became more intense it included segregation of Jews in ghettos, and exile. Riots were organized by party leaders to loot Jewish business places and to burn synagogues. Jewish property was confiscated and a collective fine of a billion marks was imposed upon German Jewry. The program progressed in fury and irresponsibility to the "final solution." This consisted of sending all Jews who were fit to work to concentration camps as slace laborers, and all who were not fit, which included children under 12 and people over 50, as well as any others judged ubfit by an SS doctor, to concentration camps for extermination.(44)

Adolf Eichmann, the sinister figure who had charge of the extermination program, has estimated that the anti-Jewish activities resulted in the killing of six million Jews. Of these, four million were killed in extermination institutions, and two million were killed by Einsatzgruppen, mobile units of the Security Police and SD which pursued Jews in the ghettos and in their homes and slaughtered them by gas wagons, by mass shooting in anti-tank ditches and by every device which Nazi ingenuity could conceive. So thorough and uncompromising was this program that the Jews of Europe as a race no longer exist, thus fulfilling the diabolic "prophecy" of Adolf Hitler at the

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beginning of the war. (45)

Of course, any such program must reckon with the opposition of the Christian Church. This was recognized from the very beginning. Defendant Bormann wrote all Gauleiters in 1941 that "National Socialism and Christian concepts are irreconciliable," and that the people must be separated from the Churches and the influence of the Churches totally removed. (46) Defendant Rosenberg even wrote dreary treatises advocating a new and weird Nazi religion. (47)

The Gestapo appointed "Church specialists" who were instructed that the ultimate aim was "destruction of the confessional Churches." (48) The record is full of specific instances of the persecution of clergymen, (49) the confiscation of Church property, (50) interference with religious publications, (51) disruption of religious education, (52) and suppression of religious organizations. (53)

The chief instrumentality for persecution and extermination was the concentration camp, sired by the defendant Goering and nurtured under the overall authority of defendants Frick and Kaltenbrunner.

The horrors of these iniquitous places have been vividly disclosed by documents (54) and testified to by witnesses.(55) The Tribunal must be satiated with ghastly verbal and pictorial portrayals. From your records it is clear that the concentration camps were the first and worst weapon of Nazi oppression used by the National Socialist State, and that they were the primary means utilized for the persecution of the Christian Church and the extermination of the Jewish race. This has been admitted to you by some of the defendants from the witness stand. (56) In the words of defendant Frank:

> "A thousand years will pass and this guilt of Germany will still not be erased." (57)

These, then, were the five great substantive crimes of the Nazi regime. Their commission, which cannot be denied, stands admitted. The defendant Keitel, who is in a position to know the facts, has given the Tribunal what seems to be a fair summation of the case on the facts:

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"The defendant has declared that he admits the contents of the general Indictment to be proved from the objective and factual point of view (that is to say, not every individual case) and this in consideration of the law of procedure governing this trial. It would be senseless, despite the possibility of refuting several documents or individual facts to attempt to shake the Indictment as a whole." (58)

I pass now to the inquiry as to whether these groups of criminal acts were integrated in a common plan or conspiracy.

The prosecution submits that these five categories of premeditated crimes were not separate and independent phenomena but that all were committed pursuant to a common plan or conspiracy. The defense admits that these classes of crimes were committed but denies that they are connected one with another as parts of a single program.

The central crime in this pattern of crime, the kingpin which holds them all together, is the plot for aggressive war. The chief reason for international cognizance of these crimes lies in this fact. Have we established the plan or conspiracy to make aggressive war?

Certain admitted or clearly proven facts help answer that question. First is the fact that such war of aggression did take place. Second, it is admitted that from the moment the Nazis came to power, everyone of them and every one of the defendants worked like beavers to prepare for some war. The question therefore comes to this: Were they preparing for the war which did occur, or were they preparing for some war which never has happened? It is probably true that in their early days none of them had in mind what month of what year war would begin, the exact dispute which would precipitate it, or whether its first impact would be Austria, Czechoslovakia, or Poland. But I submit that the defendants either knew or were chargeable with knowledge that the war for which they were making ready would be a war a German aggression. This is partly because there was no real expectation that any power or combination of powers would attack Germany. But it is chiefly because the inherent nature of the German plans was such that they were certain sooner or

or later to meet resistance and that they could then be accomplished only by aggression.

The plans of Adolf Hitler for aggression were just as secret as "Mein Kampf," of which over six million copies were published in Germany. He not only openly advocated overthrowing the Treaty of Versailles, but made demands which went far beyond a mere rectification of its alleged injustices. (59) He avowed an intention to attack neighboring states and seize their lands,(60) which he said would have to be won with "the power of a triumphant sword."(61) Here, for every German to hearken to, were the "ancestral voices prophesying war."

Goering has testified in this courtroom that at his first meeting with Hitler, long before the seizure of power: quoting:

> "I noted that Hitler had a definite view of the impotency of protest and, as a second point, that he was of the opinion that Germany should be freed of the Peace of Versailles.*** We did not say we shall have to have a war and defeat our enemies; this was the aim and the methods had to be adapted to the political situation." (62)

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When asked if this goal were to be accomplished by war if necessary, Goering did not deny that eventuality but evaded a direct answer by saying, "We did not even debate about those things at that time." He went on to say that the aim to overthrow the Treaty of Versailles was open and notorious and that I quote again "every German in my opinion was for its modification, and there was no doubt that this was a strong inducement for joining the party." (63) Thus, there can be no possible excuse for any person who aided Hitler to get absolute power over the German people, or wh took a part in his regime, to fail to know the nature of the demands he would make on Germany's neighbors.

Immediately after the seizure of power the Nazis went to work to implement these aggressive intentions by preparing for war. They first enlist German industrialists in a secret rearmament program. Twenty days after the seizure of power Schacht was host to Hitler, Goering, and some twenty leadin industrialists. Among them were Krupp von Bohlen of the great Krupp armament works and representatives of I.G. Farben and other Ruhr heavy industries. Hitler and Goering explained their program to the industrialists, who became so enthusiastic that they set about to raise three million Reichsmarks to strengthen and confirm the Nazi Party in power.(64) Two months later Krupp was working to bring a reorganized association of German industry into agreement with the political aims of the Nazi government.(65) Krupp later boasted of the success in keeping the German war industries secretly alive and in readiness despite the disarmament clauses of the Versailles Treaty, and recalled the industrialists' enthusiastic acceptance of "the great intentions of the Fuehrer in the rearmament period of 1933-1939." (66)

Some two months after Schacht had sponsored his first meeting to gain the support of the industrialists, the Nazis moved to harness industrial labor to their aggressive plans. In April 1933 Hitler ordered Dr. Ley "to take over the trade unions", numbering some 6 million members. By Party directive Ley seized the unions, their property and their funds. Union leaders, taken into "protective custody" by the SS and SA were put into concentration camps.(67) The free labor unions were then replaced by a Nazi organization known as the German Labor Front, with Dr. Ley as its head.

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It was expanded until it controlled over 23 million members. (68) Collective bargaining was eliminated, the voice of labor could no longer be heard as to working conditions, and the labor contract was prescribed by "trustees of labor" appointed by Hitler. (69) The war purpose of this labor program was clearly acknowledged by Robert Ley five days after war broke out, when he declared in a speech that

> "We National Socialists have monopolized all resources and all our energies during the past seven years so as to be able to be equipped for the supreme effort of battle." (70)

The Nazis also proceeded at once to adapt the government to the needs of war. In April 1933 the Cabinet formed a Defense Council, the working committee of which met frequently thereafter. In the meeting of 23 May 1935 at which defendant Keitel presided, the members were instructed that

> "No document must be lost since otherwise the enemy propaganda would make use of it. Matters communicated orally cannot be proven; they can be denied by us in Geneva." (71)

In January 1934, and, your Honors, dates, in this connection are important, with defendant Jodl present, the Council planned a mobilization calendar and mobilization order for some 240,000 industrial plants. Again it was agreed that nothing should be in writing so that "the military purpose may not be traceable." (72)

On May 21, 1933 the top secret Reich Defense Law was enacted. Defendant Schacht was appointed Plenipotentiary General for War Economy with the task of secretly preparing all economic forces for war and, in the event of mobilization, of financing the war. (73)

Schacht's secret efforts were supplemented in October 1936 by the appointment of defendant Goering as Commissioner of the Four-Year Plan, with the duty of putting the entire economy in a state of readiness for war within four years. (74).

A secret program for the accumulation of the raw materials and foreign credits necessary for extensive rearmament was also set on foot immediately upon seizure of power. In September of 1934, the Minister of Economics was already complaining that

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"The task of stockpiling is being hampered by the lack of foreign currency; the need for secrecy and camouflage also is a retarding influence." (75)

Foreign currency controls were at once established. (76) Financing was delegated to the wizard Schacht, who conjured up the MEFO bill to serve the dual objectives of tapping the short-term money market for rearmament purposes while concealing the amount of these expenditures. (77)

The spirit of the whole Nazi administration was summed up by Goering at a meeting of the Council of Ministers, which included Schacht, on 27 May 1936, when he said,

"All measures are to be considered from the standpoint of an assured waging of war." (78)

The General Staff, of course, also had to be enlisted in the war plans. Most of the Generals, attracted by the prospect of rebuilding their armies, became willing accomplices. The hold-over Minister of War von Blomberg and the Chief of Staff General von Fritsch, however, were not cordial to the increasingly belligernet policy of the Hitler regime, and by vicious and obscene plotting they were discredited and removed in January 1938. (79) Thereupon, Hitler assumed for himself Surpeme Command of the Armed Forces, and the positions of Blomberg said of Keitel, "a willing tool in Hitler's hands for every one of his decisions." (80) The Generals did not confine their participation to merely military matters. They participated in all major diplomatic and political maneuvers, such as the Obersalzburg meeting where Hitler, flanked by Keitel and other top Generals, issued his virtual ultimatum to Schischnigg. (81)

As early as November 5, 1937, the plan to attack had begun to take definiteness as to time and victim. In a meeting which included the defendants Raeder, Goering, and von-Neurath, Hitler stated the cynical objectives:

"The question for Germany is where the greatest possible conquest could be made at the lowest possible cost."

He discussed various plans for the invasion of Austria and Czechoslovakia, indicating clearly that he was thinking of these territories not as ends in themselves, but as means for further conquest.

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He pointed out that considerable military and political assistance could be afforded by possession of these lands and discussed the possibility of constituting from them new armies up to a strength of about 12 divisions. The aim he stated boldly and baldly as the acquisition of additional living space in Europe, and recognized that "The German question can be solved only by way of force." (82)

Six months later, emboldened by the bloodless Austrian conquest, Hitler, in a secret directive to Keitel, stated his "unalterable decision to smash Czechoslovakia by military action in the near future." (83) On the same day, Jodl noted in his diary that the Fuehrer had stated his final decision to destroy Czechoslovakia soon and had initiated military preparations all along the line. (84) By April the plan had been perfected to attack Czechoslovakia "with lightning swift action as the result of an incident". (85)

All along the line preparations became more definite for a war of expansion on the assumption that it would result in a world-wide conflict. In September 1938 Admiral Carls officially commented on a "Draft Study of Naval Warfare against England" :

"There is full agreement with the main theme of the study.

"1. If according to the Fuehrer's decision Germany is to acquire a position as a world power, she needs not only sufficient colonial possessions but also secure naval communications and secure access to the ocean.

2. Both requirements can only be fulfilled in opposition to Anglo-French interests and will limit their positions as world powers. It is unlikely that they can be achieved by peaceful means. The decision to make Germany a world power therefore forces upon us the necessity of making the corresponding preparations for war.

3. War against England meansat the same time war against the Empire against France, probably against Russia as well, and a large number of countries overseas; in fact, against one-half to one-third of the whole world.

It can only be justified and have a chance of success if it is prepared economically as well as politically and militarily and waged with the aim of conquering for Germany an outlet to the ocean." (86)

This Tribunal knows what categorical assurances were given to an alarmed world after the Anschluss, after Munich, after the occupation of Bohemia and Moravia, that German ambitions were realized and that Hitler had "no further territorial demands to make in Europe." (87) The record of this trial shows that those promises were calculated deceptions and that those high in the bloody brotherhood of Nazidom knew it.

As early as April 15, 1938 Goering pointed out to Mussolini and Ciano that the possession of those territories would make possible an attack on Poland. (88) Ribbentrop's Ministry on August 26, 1938 was writing :

"After the liquidation of the Czechoslovakian question, it will be generally assumed that Poland will be next in turn". (89)

Hitler, after the Polish invasion, boasted that it was the Austrian and Czechoslovakian triumphs by which "the basis for the action against Poland was laid." (90) Goering suited the act to the purpose and gave immediate instructions to exploit for the further strengthening of the German's war petential, first of the Sudetenland, and then of the whole Protectorate. (91

By May of 1939 the Nazi preparations had ripened to the point that Hitler confided to the defendants Goering, Raeder, Keitel, and others, his readiness "to attack Poland at the first suitable opportunity", even though he recognized that "further successes cannot be attained without the sheddin of blood." The larcenous motives behind this decision he made plain in word, that echoed the coverous theme of "Mein Kampf:"

"Circumstances must be adapted to aims. This is impossible without invasion of foreign states or attacks upon foreign property. Living space in proportion to the magnitude of the state, is the basis of all power -further seccesses cannot be attained without expanding our living space in the East ..." (92)

While a credulous world slumbered, snugly blamketed with perfidious assurances of peaceful intentions the Nazis prepared not as before for a war but now for the war. The defendants Goering, Keitel, Raeder, Frick and Funk with others, met as the Reich Defense Council in June of 1939. The minutes, authenticayed by Goering, are revealing evidences of the way in which each step of Nazi planning devetailed with every other.

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These five key defendants, three months before the first panzer unit had knifed into Poland, were laying plans for "employment of the population in wartime", and had gone so far as to classify industry for priority in labor supply after "five million servicemen had been called up". They decided upon measures to avoid "confusion when mobilization takes place," and declared a purpose "to gain and maintain the lead in the decisive initial weeks of a war." They then planned to use in production prisoners of war criminal prisoners, and concentration camp inmates. They tehn decided on "compulsory work for women in wartime." They had already passed on applications from 1,172,000 specialist workmen for classification as indispensable, and had approved 727,000 of them. They boasted that orders to workers to report for duty "are ready and tied up in bundles at the labor offices." And they resolved to increase the industrial manpower supply by bringing into Germany "hundreds of thousands of workers" from the Protectorate to be "housed together in hutments." (93)

It is the minutes of this significant conclave of many key defendants which disclose how the plan to start the war was coupled

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with the plan to wage the war through the use of illegal sources of labor to maintain production. Hitler, in announcing his plan to attack Poland, had already foreshadowed the slave labor program as one of its corollaries when he cryptically pointed out to the defendants Goering, Raeder, Keitel, and others that the Polish population "will be available as a source of labor" (94). This was part of the plan made good by Frank, who, as Governor General notified Goering that he would supply "at least one million make and female agricultural and industrial workers to the Reich," (95) and by Saukel, whose impressments throughout occupied territory aggreagated numbers equal to the total population of some of the smaller nations of Europe.

Here also comes to the surface the link between war labor and concentration camps, a manpower source that was increasingly used and with increasing cruelty. An agreement between Himmler and the Minister of Justice Thierack in 1942 provided for "the delivery of anti-social elements from the execution of their sentence to the Reichs Fuehrer SS to be worked to death", (96). An SS directive provided that bedridden prisoners be drafted for work to be performed in bed. (97) The Gestapo ordered 46,000 Jews arrested to increase the "recruitment of manpower into the concentration camps". (98) One hundred thousand Jews were brought from Hungary to augment the camps' manpower. (99) On the initiative of the defendant Doenitz, concentration camp labor was used in the construction of submarines. (100) Concentration camps were thus geared into war production on the one hand, and into the administration of justice and the political aims of the Nazis on the other.

The use of prisoner-of-war labor as then planned in that meeting, also grew with German needs. At a time when every German soldier was needed at the front and forces were not available at home, Russian prisoners-of-war were forced to man anti-aircraft guns against Allied planes. Field Marshal Milch reflected the Nazi merriment at this flagrant violation of International Law, saying:

"....This is an amusing thing, that the Russians must work the guns." (101)

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The orders for the treatment of Soviet prisoners-of-war were so ruthless that Admiral Canaris, pointing out that they would "result in arbitrary mistreatments and killing," protested to the OKW against them as breaches of International Law. The reply of Keitel was unambiguous. He said:

> "The objections arise from the military conception of chivalrous warfare! This is the destruction of an ideology! Therefore, I approve and back the measures". (102).

The Geneva Convention would have been thrown overboard openly except that Jodl objected because he wanted the benefits of Allied observance of it while it was not being allowed to hamper the Germans in any way (103).

Other crimes in the conduct of warfare were planned with equal thoroughness as a means of insuring victory of German arms. In October 1938, almost a year before the start of the war, the large-scale violation of the established rules of warfare was contemplated as a policy, and the Supreme Command circulated a Most Secret list of devious explanations to be given by the Propaganda Minister in such cases (104). Even before this time commanders of the armed forces were instructed to employ any means of warfare so long as it facilitated victory (105). After the war was in progress the orders increased in savagery. A typical Keitel order, demanding the use of the "most brutal means", provided that:

> "...It is the duty of the troops to use all means without restriction, even against women and children, so long as it insures success." (106).

The German Naval forces were not more immune from the infection than the land forces. Reader ordered violations of the accepted rules of warfare wherever necessary to gain strategic successes. (107). Doenitz urged his submarine crews not to rescue survivors of torpedoed enemy ships in order to cripple merchant shipping of the Allied Nations by decimating their crews. (108).

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Thus, the war crimes against Allied forces and the crimes against humanity committed in occupied territories are incontestably part of the program of making the war because, in the German calculations, they were indispensable to its hope of success.

Similarly, the whole group of pre-war crimes, including the persecutions within Germany, fall into place around the plan for aggressive war like stones in a finely wrought mosaic. Nowhere is the whole catalogue of crimes of Nazi oppression and terrorism within Germany so well integrated with the crime of war as in that strange mixture of wind and wisdom which makes up the testimony of Hermann Goering. In describing the aims of the Nazi program before the seizure of power, Goering said:

> "The first question was to achieve and establish a different political structure for Germany which would enable Germany to obtain against the Dictate (of Versailles), and not only a protest, but an objection of such a nature that it would actually be considered." (109).

With these purposes, Goering admitted that the plan was made to overthrow the Weimar Republic, to seize power, and to carry out the Nazi program by whatever means were necessary, whether legal or illegal. (110).

From Goering's cross-examination we learn how necessarily the whole program of crime followed. (111). Because they considered a strong state necessary to get rid of the Versailles Treaty, they adopted the fuehrerprinzip. Having seized power, the Nazis thought it necessary to protect it by abolishing parliamentary government, and suppressing all organized opposition from political parties. (112) This was reflected in the philosophy of Goering that the opera was more important than the Reichstag (113). Even the "opposition of each individual was not tolerated unless it was a matter of unimportance." To insure the suppression of opposition a secret political force was necessary. In order to eliminate incorrigible opponents, it was necessary to establish concentration camps and to resort to the device of protective custody. Protective custody, Goering testified, meant that:

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"People were arrested and taken into protective custody who had commited no crime but who one might expect, if they remained in freedom, would do all sorts of things to damage the Germans State." (114).

The same war purpose was dominant in the persecution of the Jews. In the beginning, fanaticism and political opportunism played a principle part, for anti-Semitism and its allied scapegoat, mythology, was a vehicle on which the Nazis rode to power. It was for this reason that the filthy Streicher and the blasphemous Rosenberg were welcomed at Party rallies and made leaders and officials of the State or Party. Bu the Nazis soon regarded the Jews as foremost amongst the opposition to the policestate with which they planned to put forward their plans of military aggression. Fear of their pacifism and their opposition to strident nationalism was given as the reason that the Jews had to be driven from the political and economic life of Germany. (115) Accordingly, they were transported like cattle to the concentration camps, where they were utilized as a source of forced labor for war purposes.

At a meeting held on 12 November 1938, two days after the violent anti-Jewish pogroms instigated by Goebbels and carried out by the Party Leadership Corps and the SA, the program for the elimination of Jews from the German economy was mapped out by Goering, Funk, Heydrich, Goebbels, and the other top Nazis. The measures adopted included confinement of the Jews in ghettos, cutting off their food supply, "aryanizing" their shops, and restricting their freedom of movement. (116) Here another purpose behind the Jewish persecutions crept in, for it was the wholesale confiscation of their property which helped finance German rearmament. Although Schacht's plan to have foreign money ransom the entire race within Germany was not adopted, the Jews were stripped to the point where Goering was able to advise the Reich Defense Council that the critical situation of the Reich exchequer, due to rearmament, had been relieved "through the billion Reichsmark fine imposed on Jewry, and through profits accrued to the Reich in the aryanization of Jewish enterprises." (117)

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A glance over the dock will show that, despite quarrels among themselves, each defendant played a part which fitted in with every other, and that all advanced the common plan. It contradicts experience that men of such diverse backgrounds and talents should so forward each other's aims by coincidence.

The large and varied role of Goering was half militarist and half gangster. He stuck his pudgy finger in every pie. He used his SA musclemen to help bring the gang into power. In order to entrench that power he contrived to have the Reichstag burned, established the Gestapo, and created the concentration camps. He was equally adept at massacring opponenets and at framing scandals to get rid of stubborn generals. He huilt up the Luftwaffe and hurled it at his defenseless neighbors. He was among the foremost in harrying Jews out of the land. By mobilizing the total economic resources of Germany he made possible the waging of the war which he had taken a large part in planning. He was, next to Hitler, the man to tied the activities of all the defendants together in a common effort.

The partsplayed by the other defendants, although less comprehensive and less spectacular than that of the Reichsmarshal, were nevertheless integral and necessary contributions to the joint undertaking, without any one of which the success of the common enterprize would have been in jeopardy. There are many specific deeds of which these men have been proven guilty. No purpose would be served -- nor indeed is time available -- to review all the crimes which the evidence has charged upt to their names. Nevertheless, in viewing the conspiracy as a whole and as an operating mechanism, it may be well to recall briefly the outstanding services which each of the men in the dock rendered to the common cause.

THE PRESIDENT: Would that be a convenient time to adjourn?

MR. JUSTICE JACKSON: Entirely, your Honor.

(A recess was taken).

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The zealot Hess, before succumbing to wanderlust, was the engineer tending the Party machinery, passing orders and propaganda down to the Leadership Corps, supervising every aspect of Party activities, and maintaining the organization as a loyal and ready instrument of power. When apprehensions abroad threatened the success of the Nazi regime for conquest, it was the duplicitous Ribbentrop, the salesman of deception, who was detailed to pur wine on the troubled waters of suspicion by preaching the gospel of limited and peaceful intentions. Keitel, the weak and willing tool, delivered the armed forces, the instrument of aggression, over to the Party and directed them in executing its felonous designs.

Kaltenbrunner, the grand inquisitor, took up the bloody mantle of Heydrich to stifle opposition and terrorize compliance, and buttressed the power of National Socialism on a foundation of guiltless corpses. It was Rosenberg, the intellectual high priest of the "master race", who provided the doctrine of hatred which gave the impetus for the annihilation of Jewry, and put his infidel theories into practice against the eastern occupied territories. His woolly philosophy also added boredom to the long list of Nazi atrocities. The fanatical Frank, who solidified Nazi control by establishing the new order of authority without law, so that the will of the Party was the only test of legality, proceeded to export his lawlessness to Poland, which he governed with the lash of Caesar and whose population he reduced to sorrowing remnants. Frick, the ruthless organizer, helped the Party to seize power, supervised the police agencies to insure that it stayed in power, and chained the economy of Bohemia and Moravia to the German war machine.

Streicher, the venonous vulgarian, manufactured and distributed obscene racial libels which incited the populace to accept and assist the progressively savage operations of "race purification". As Minister of Economics Funk accelerated the pace of rearmament, and as Reichsbank president banked for the SS the gold teeth fillings of concentration camp victims -- probably the most ghoulish collateral in banking history. It was Schacht, the facade of starche respectability, who in the early days provided the window dressing, the bait fo the hesitant, and whose wizardry later made it possible for Hitler to finance the colossal rearmament program, and to do it secretly.

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Doenitz, Hitler's legatee of defeat, promoted the success of the Nazi aggressions by instructing his pack of submarine killers to conduct warfare at sea with the illegal ferocity of the jungle. Raeder, the political admiral, stealthily built up the German navy in defiance of the Versailles Treaty, and then put it to use in a series of aggressions which he had taken a leading part in planning. Von Schirach, poisoner of a generation, initiated the German youth in Nazi doctrine, trained them in legions for service in the SS and Wehrmacht, and delivered them up to the Party as fanatic, unquestioning executors of its will.

Sauckel, the greatest and cruelest slaver since the Pharaohs of Egypt, produced desperately needed manpower by driving foreign peoples into the land of bondage on a scale unknown even in the ancient days of tyranny in the kingdom of the Nile. Jodl, betrayer of the traditions of his profession, led the Wehrmacht in violating its own code of military honor in order to carry out the barbarous aims of Nazi policy. Von Papen, pious agent of an infidel regime, held the stirrup while Hitler vaulted into the saddle, lubricated the Austrian annexation, and devoted his diplomatic cunning to the service of Nazi objectives abroad.

Seyss-Inquart, spearhead of the Austrian fifth-column, took over the government of his own country only to make a present of it to Hitler, and then, moving north, brought terror and oppression to the Netherlands and pillaged its economy for the benefit of the German juggernaut. Von Neurath, the old-school diplomat, who cast the pearls of his experience before Nazis, guided Nazi diplomacy in the early years, soothed the fears of prospective victims, and as Reich Protector of Bohemia and Moravia, strengthened the German position for the coming attack on Poland. Speer, as Minister of Armaments and Production, joined in planning and executing the program to dragoon prisoners of war and foreign workers into German war industries, which waxed in output while the laborers waned in starvation. Fritsche, radio propaganda chief, by manipulati of the truth goaded German public opinion into frenzied support of the regime and anesthetized the independent judgment of the population so that they did without question their masters' bidding. And Bormann, who has not accepted our invitation to this reunion, sat at the throttle of the vast and powerful engine

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of the Party, guiding it in the ruthless execution of Nazi policies, from the scourging of the Christian Church to the lynching of captive Allied airmen.

The activities of all these defendants, despite their varied backgrounds and talents, were joined with the efforts of other conspirators not now in the dock, who played still other essential roles. They blend together into one consistent and militant pattern animated by a common objective to reshape the map of Europe by force of arms. Some of these defendants were ardent members the Nazi movement from its birth. Others, less fanatical, joined the common enterprise later, after success had made participation attractive by the promise of rewards. This group of latter-day converts remedied a crucial defect in the ranks of the original true believers, for as Dr. Seimers has pointed out in his summation:

> "...There were no specialists among the National Socialists for the particular tasks. Most of the National Socialist collaborators did not previously follow a trade requiring technical education." (118)

It was the fatal weakness of the early Nazi band that it lacked technical competence. It could not from among its own ranks make up a government capable of carrying out all the projects necessary to realize its aims. Therein lies the special crime and betrayal of men like Schacht and von Neurath, Speer and von Papen, Raeder and Doenitz, Keitel and Jodl. It is doubtful whether the Nazi master plan could have succeeded without their specialized intelligence which they so willingly put at its command.(119) They did so with knowledge of its announced aims and methods, and continued their services after practice had confirmed the direction in which they were tending. Their superiority to the average run of Nazi mediocrity is not their excuse. It is their condemnation.

The dominant fact which stands out from all the thousands of pages of the record of this trial is that the central crime of the whole group of Nazi crimes -- the attack on the peace of the world -- was clearly and deliberately planned. The beginning of these wars of aggression was not an unprepared and spontaneous springing to arms by a population excited by some current indignation. A week before the invasion of Poland Hitler told his military commanders:

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> "I shall give a propagandist cause for starting war -- never mind whether it be plausible or not. The victor shall not be asked later on whether we told the truth or not. In starting and making a war, not the right is what matters, but victory." (120)

The propagandist incident was duly provided by dressing concentration camp inmates in Polish uniforms, in order to create the appearance of a Polish attack on a German frontier radio station.(121) The plan to occupy Belgium, Holland, and Luxembourg first appeared as early as August 1938 in connection with the plan for attack on Czechoslovakia.(122) The intention to attack became a program in May 1939, when Hitler told his commanders that -

> "The Dutch and Belgian air bases must be occupied by armed forces. Declarations of neutrality must be ignored."(123)

Thus, the follow-up wars were planned before the first was launched. These were the most carefully plotted wars in all history. Scarcely a step in their terrifying succession and progress failed to move according to the master blueprint or the subsidiary schedules and timetables until long after the crimes of aggression were consummated.

Nor were the war crimes and the crimes against humanity unplanned, isolated or spontaneous offenses. Aside from our undeniable evidence of their plotting it is sufficient to ask whether six million people could be separated from the population of several nations on the basis of their blood and birth, could be destroyed and their bodies disposed of, except that the operation fitted into the general scheme of government. Could the enslavement of five millions of laborers, their impressment into service, their transportation to Germany, their allocation to work where they would be most useful, their maintenance, if slow starvation can be called maintenance, and their guarding have been accomplished if it did not fit into the common plan? Could hundreds of concentration camps located throughout Germany, built to accommodate hundreds of thousands of victims, and each requiring labor and materials for construction, manpower to operate and supervise, and close gearing into the economy -- could such efforts have been expended under German autocracy if they had not suited the plan? Has the teutonic passion for organization suddenly become famous for its toleration of non-conforming activity? Each part of the plan fitted into every other. The slave labor program meshed with the needs of industry and

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agriculture, and these in turn synchronized with the military machine. The elaborate propaganda apparatus geared with the program to dominate the people and incite them to a war their sons would have to fight. The armament industries were fed by the concentration camps. The concentration camps were fed by the Gestapo. The Gestapo was fed by the spy system of the Nazi Party. Nothing was permitted under the Nazi iron rule that was not in accordance with the program. Everything of consequence that took place in this regimented society was but a manifestation of a premeditated and unfolding purpose to secure the Nazi state a place in the sun by casting all others into darkness.

COMMON DEFENSES AGAINST THE CHARGE OF COMMON RESPONSIBILITY

The defendants meet this overwhelming case, some by admitting a limited responsibility, (124) some by putting the blame on others, (125) and some by taking the position, if effect, that while there have been enormous crimes there are no criminals Time will not permit me to examine each individual and particular defense, but there are certain lines of defense common to so many cases that they deserve some consideration.

Counsel for many of the defendants seek to dismiss the conspiracy or common planning charge on the ground that the pattern of the Nazi plan does not fit into the concept of conspiracy applicable in German law to the plotting of a highway robbery or a burglary. (126) Their concept of conspiracy is in the terms of a stealthy meeting in the dead of night, in a secluded hideout, in which a small group of felons plot every detail of a specific crime. The Charter forestalls resort to such parochial and narrow concepts of conspiracy taken from local law by using the additional and non-technical term, "common plan." Omitting entirely the alternative term of "conspiracy," the Charter reads that "leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan to commit" and of the described crimes " are respon-

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sible for all acts performed by any persons in execution of such plan."

The Charter concept of a common plan really represents the conspiracy principle in an international context. A common plan or conspiracy to seize the machinery of a state, to commit crimes against the peace of the world, to blot a race out of existence, to enslave millions, and to subjugate and loot whole nations cannot be thought of in the same terms as the plotting of petty crimes, although the same underlying principles are applicable. Little gangsters may plan which will carry a pistol and which a stiletto, who will approach a victim from the front and who from behind, and where they will waylay him. But in planning a war, the pistol becomes a Wehrmacht, the stiletto, a Luftwaffe. Where to strike is not a choice of dark alleys, but a matter of world geography. The operation involves the manipulation of public opinion, the law of the state, the police power, industry, and finance. The baits and bluffs must be translated into a nation's foreign policy. Likewise, the degree of stealth which points to a guilty purpose in a conspiracy will depend upon its object. The clandestine preparations of a state against international society, although camouflaged to those abroad, might be quite open and notorious among its own people. But stealth is not an essential ingredient of such planning. Parts of the common plan may be proclaimed from the housetops, as anti-Semitism was, and parts of it kept undercover, as rearmament for a long time was. It is a matter of strategy how much of the preparation shall be made public, as was Goering' announcement in 1935 of the creation of an air force, and how much shall be kept covert, as in the case of the Nazis' use of shovels to teach "labor corps" the manual of arms. (127) The forms of this grand type of conspiracy are amorphous, the means are opportunistic, and neither can divert the law from getting at the substance of things.

The defendants contend, however, that there could be no

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conspiracy involving aggressive war because (1) none of the Nazis wanted war; (128) (2) rearmament was only intended to provide the strength to make Germany's voice heard in the family of nations; (129) and (3) the wars were not in fact aggressive wars but were defensive against a " Bolshevik menace." (130)

When we analyze the argument that the Nazis did not want war it comes down, in substance, to this: "The record looks bad indeed -- objectively -- but when you consider the state of my mind -- subjectively I hated war. I know the horrors of war. I wanted peace." I am not so sure of this. I am even less willing to accept Goering's description of the General Staff as pacifist. (131) However, it will not injure our case to admit that as an abstract proposition none of these defendants liked war. (132) But they wanted things which they knew they could not get without war. They wanted their neighbors' lands and goods. Their philosophy seems to be that if the neighbors would not acquiesce, then they are the aggressors and are to blame for the war. The fact is, however, that war never became terrible to the Nazis until it came home to them, until it exposed their deceptive assurances to the German people that German cities, like the ruined one in which we meet, would be invulnerable. From then on, war was terrible.

But again the defendants claim, "To be sure, we were building guns. But not to shoot. They were only to give us weight in negotiating." At its best this argument amounts to a contention that the military forces were intended for blackmail, not for battle. The threat of military invasion which forced the Austrian Anschluss, the threats which preceded Munich, and Goering's threat to bomb the beautiful city of Prague if the President of Czechoslovakia did not consent to the Protectorate, (133) are examples of what the defendants have in mind when they talk of arming to back negotiation.

But from the very nature of German demands, the day was bound to come when some country would refuse to buy its peace,

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would refuse to pay Dane-geld, --

> "For the end of that game is oppression and shame,
> And the nation that plays it is lost."

Did these defendants then intend to withdraw German demands, or was Germany to enforce them and manipulate propaganda so as to place the blame for the war on the nation so unreasonable as to resist? Events have answered that question, and documents such as Admiral Carl's memorandum, earlier quoted, leave no doubt that the events occurred as anticipated. (134)

But some of the defendants argue that the wars were not aggressive and were only intended to protect Germany against some eventual danger from the "menace of Communism," which was something of an obsession with many Nazis.

At the outset this argument of self-defense falls because it completely ignores this damning combination of facts clearly established in the record: first, the enormous and rapid German preparations for war; second, the repeatedly avowed intentions of the German leaders to attack, which I have previously cited; and third, the fact that a series of wars occurred in which German forces struck the first blows, without warning, across the borders of other nations.

Even if it could be shown -- which it cannot be -- that the Russian war was really defensive, such is demonstrably not the case with those wars which preceded it.

It may also be pointed out that even those who would have you believe that Germany was menaced by Communism also compete with each other in describing their opposition to the disastrous Russian venture. (135) Is it reasonable that they would have opposed that war if it were undertaken in good faith self-defense?

The frivolous character of the self-defense theory on the facts it is sought to compensate, as advocates often do, by resort to a theory of law. Dr. Jahrreiss, in his scholarly argument for the defense, rightly points out that no treaty provision and no principle of law denied Germany, as a sovereign nation, the right of self-defense. He follows with the assertion, for which there is authority in classic International Law, that

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> "....every state is alone judge of whether in a given case it is waging a war of self-defense." (136)

It is not necessary to examine the validity of an abstract principle which does not apply to the facts of our case. I do not doubt that if a nation arrived at a judgment that it must resort to war in self-defense, because of conditions affording reasonable grounds for such an honest judgment, any Tribunal would accord it great and perhaps conclusive weight, even if later events proved that judgment mistaken.

But the facts in this case call for no such deference to honest judgment because no such judgment was ever pretended, much less honestly made.

In all the documents which disclose the planning and rationalization of these attacks, not one sentence has been or can be cited to show a good faith fear of attack. It may be that statesmen of other nations lacked the courage forthrightly and fully to disarm. Perhaps they suspected the secret rearmament of Germany. But if they hesitated to abandon arms, they did not hesitate to neglect them. Germany well knew that her former enemies had allowed their armaments to fall into decay, so little did they contemplate another war. Germany faced a Europe that not only was unwilling to attack, but was too weak and pacifist even adequately to defend, and went to the very verge of dishonor, if not beyond, to buy its peace. The minutes we have shown you of the Nazis' secret conclaves identify no potential attacker. They bristle with the spirit of aggression and not of defense. They contemplate always territorial expansion, not the maintenance of territorial integrity.

Minister of War von Blomberg, in his 1937 directive prescribing general principles for the preparation for war of the armed forces, has given the lie to these feeble claims of self-defense. He stated at that time:

> "The general political situation justifies the supposition that Germany need not consider an attack on any side. Grounds for this are, in addition to the lack of desire for war in almost all nations, particularly the Western Powers, the deficiencies in the preparedness for war in a number of states and of Russia in particular."

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Nevertheless, he recommended

> "a continuous preparedness for war in order to (a) counter-attack at any time, and (b) to enable the military exploitation of politically favorable opportunities should they occur," (137)

If these defendants may now cynically plead self-defense, although no good faith need of self-defense was asserted or contemplated by any responsible leader at the time, it reduces non-aggression treaties to a legal absurdity. They become only additional instruments of deception in the hands of the aggressor, and traps for well-meaning nations. If there be in non-aggression pacts an implied condition that each nation may make a bona fide judgment as to the necessity for self-defense against imminent threatened attack, it certainly cannot be invoked to shelter those who never made any such judgment at all.

In opening this case I ventured to predict that there would be no serious denial that the crimes charged were committed, and that the issue would concern the responsibility of particular defendants. The defendants have fulfilled that prophecy. Generally, they do not deny that these things happened, but it is contended that they "just happened," and that they were not the result of a common plan or conspiracy.

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One of the chief reasons the defendants say there was no conspiracy is the argument that conspiracy was impossible with a dictator.(138) The argument runs that they all had to obey Hitler's orders, which had the force of law in the German state, and hence obedience could not be made the basis of a criminal charge. In this way it is explained that while there have been wholesale killings, there have been no murderers.

This argument is an effort to evade Article 8 of the Charter, which provides that the order of the government or of a superior shall not free a defendant from responsibility but can only be considered in mitigation. This provision of the Charter corresponds with the justice and with the realities of the situation, as indicated in defendant Speer's description of what he considered to be the common responsibility of the leaders of the German nation:

> "...with reference to utterly decisive matters, there is total responsibility. There must be total responsibility insofar as a person is one of the leaders, because who else could assume responsibility for the development of events, if not the immediate associates who work with and around the head of the state?" (139)

And again he told the Tribunal:

> "...it is impossible after the catastrophe to evade this total responsibility. If the war had been won, the leaders would also have assumed total responsibility."(140)

Like much of defense counsel's abstract arguments, the contention that the absolute power of Hitler precluded a conspiracy crumbles in fact of the facts of record. The Fuehrerprinzip of absolutism was itself a part of the common plan, as Goering has pointed out.(141) The defendants may have become the slaves of a dictator, but he was <u>their</u> dictator. To make him such was, as Goering has testified, the object of the Nazi movement from the beginning. Every Nazi took this oath:

> "I pledge eternal allegiance to Adolf Hitler. I pledge unconditional obedience to him and the fuehrers appointed by him." (142)

Moreover, they forced everybody else in their power to take it. This oath was illegal under German law, which made it criminal to become a member of an

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organization in which obedience to "unknown superiors or unconditional obedience to known superiors is pledged."(143) These men destroyed free government in Germany and now plead to be excused from responsibility because they became slaves. They are in the position of the fictional boy who murdered his father and mother and then pleaded for leniency because he was an orphan.

What these men have overlooked is that Adolf Hitler's acts are their acts. It was these men among millions of others, and it was these men leading millions of others, who built up Adolf Hitler and vested in his psychopathic personality not only innumerable lesser decisions but the supreme issue of war or peace. They intoxicated him with power and adulation. They fed his hates and aroused his fears. They put a loaded gun in his eager hands. It was left to Hitler to pull the trigger, and when he did they all at that time approved. His guilt stands admitted, by some defendants reluctantly, by some vindictively. But his guilt is the guilt of the whole dock, and of every man in it.

But it is urged that these defendants could not be in agreement on a common plan or in a conspiracy because they were fighting among themselves or belonged to different factions or cliques. Of course, it is not necessary that men should agree on everything in order to agree on enough things to make them liable for a criminal conspiracy. Unquestionably there were conspiracies within the conspiracy, and intrigues and rivalries and battles for power. Schacht and Goering disagreed, but over which of them should control the economy, not over whether the economy should be regimented for war.(144) Goering claims to have departed from the plan because through Dahlerus he conducted some negotiations with men of influence in England just before the Polish war. But it is perfectly clear that this was not an effort to prevent aggression against Poland but to make that aggression successful and safe by obtaining English neutrality. (145) Rosenberg and Goering may have had some differences as to how stolen art should be distributed but they had none about how it should be stolen. Jodl and Goebbels may have disagreed about whether to denounce the Geneva

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Convention, but they never disagreed about violating it. And so it goes through the whole long and sordid story. Nowhere do we find an instance where any one of the defendants stood up against the rest and said, This thing is wrong and I will not go along with it. Wherever they differed, their differences were as to method or disputes over jurisdiction, but always within the framework of the common plan.

Some of the defendants also contend that in any event there was no conspiracy to commit war crimes or crimes against humanity because Cabinet members never met with the military to plan these acts. But these crimes were only the inevitable and incidental results of the plan to commit the aggression for Lebensraum purposes. Hitler stated, at a conference with his commanders, that

"The main objective in Poland is the destruction of the enemy and not the reaching of a certain geographical line."(146)

Frank picked up the tune and suggested that when their usefulness was exhausted,

"...then, for all I care, mincemeat can be made of the Poles and Ukrainians and all the others who run around here - it does not matter what happens." (147)

Reichscommissar Koch in the Ukraine echoed the refrain:

"I will draw the very last out of this country. I did not come to spread bliss..."(148)

This was Lebensraum on its seamy side. Could men of their practical intelligence expect to get neighboring lands free from the claims of their tenants without committing crimes against humanity?

The last stand of each defendant is that even if there was a conspiracy, he was not in it. It is therefore important in examining their attempts at avoidance of responsibility to know, first of all, just what it is that a conspiracy charge comprehends and punishes.

In conspiracy we do not punish one man for another man's crime. We seek to punish each for his own crime of joining a common criminal plan in which others also participated. The measure of the criminality of the plan and therefore of the guilt of each participant is, of course, the sum total of crimes committed by all in executing the plan. But the gist of

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the offense is participation in the formulation or execution of the plan. These are rules which every society has found necessary in order to reach men, like these defendants, who never get blood on their own hands but who lay plans that result in the shedding of blood. All over Germany today, in every zone of occupation, little men who carried out these criminal policies under orders are

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being convicted and punished. It would present a vast and unforgiveable caricature of justice if the men who planned these policies and directed these little men should escape all penalty.(119)

These men in this dock, on the face of this record, were not strangers to this program of crime, nor was their connection with it remote or obscure. We find them in the very heart of it. The positions they held show that we have chosen defendants of self-evident responsibility. They are the very top surviving authorities in their respective fields and in the Nazi State. No one lives who, at least until the very last moments of the war, outranked Goering in position, power, and influence. No soldier stood above Keitel and Jodl, and no sailor above Raeder and Doenitz. Who can be responsible for the duplicitous diplomacy if not the Foreign Ministers, von Neurath and Ribbentrop, and the diplomatic handy man, von Papen? Who should be answerable for the oppressive administration of occupied countries if Gauleiters, Protectors, Governors and Commissars such as Frank, Seyss-Inquart, Frick, von Schirach, von Neurath, and Rosenberg are not? Where shall we look for those who mobilized the economy for total war if we overlook Schacht and Speer and Funk? Who was the master of the great slaving enterprise if it was not Sauckel? Where shall we find the hand that ran the concentration camps if it was not the hand of Kaltenbrunner? And who whipped up the hates and fears of the public, and manipulated the Party organizations to incite these crimes, if not Hess, von Schirach, Fritzsche, Bormann and the unspeakable Julius Streicher? The list of defendants is made up of men who played indispensable and reciprocal parts in this tragedy. The photographs and the films show them again and again together on important occasions. The documents show them agreed on policies and on methods, and all working aggressively for the expansion of Germany by force of arms.

Each of these men made a real contribution to the Nazi plan. Each man had a key part. Deprive the Nazi regime of the functions performed by a Schacht, a Sauckel, a von Papen, or a Goering, and you have a different regime. Look down the rows of fallen men and picture them as the photographic and documentary evidence shows them to have been in their days of power. Is there one who did not substantially advance the conspiracy along its bloody path towards its bloody goal? Can we assume that the great effort of these men's lives was

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directed towards ends they never suspected?

To escape the implications of their positions and the inference of guilt from their activities, the defendants are almost unanimous i n one defense. The refrain is heard time and again: these men were without authority, without knowledge, without influence, without importance. Funk summed up the general self-abasement of the dock in his plaintive lament that

"I always, so to speak, came up to the door. But I was not permitted to enter." (150)

In the testimony of each defendant, at some point there was reached the familiar blank wall: nobody knew anything about what was going on. Time after time we have heard the chorus from the dock,

"I only heard about these things here for the first time." (151)

These men saw no evil, spoke none, and none, and none was uttered in their presence. This claim might sound very plausible if made by one defendant. But when we put all their stories together, the impression which emerges of the Third Reich, which was to last a thousand years, is ludicrous. If we combine only the stories from the front bench, this is the ridiculous composite picture of Hitler's government that emerges. It was composed of:

A No. 2man who knew nothing of the excesses of the Gestapo which he created, and never suspected the Jewish extermination program although he was the signer of over a score of decrees which instituted the persecutions of that race;

A No. 3 man who was merely an innocent middleman transmitting Hitler's orders without even reading them, like a postman or delivery boy;

A Foreign Minister who knew little of foreign affairs and nothing of foreign policy;

A Field Marshal who issued orders to the armed forces but had no idea of the results they would have in practice;

A Security chief who was of the impression that the policing functions of his Gestapo and SD were somewhat on the order of directing traffic;

A Party philosopher who was interested in historical research, and had no idea of the violence which his philosophy was inciting in the Twentieth Century;

A Governor General of Poland who reigned but did not rule;

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A Gauleiter of Franconia whose occupation was to pour forth filthy writings about the Jews, but who had no idea that anybody would read them;

A Minister of the Interior who knew not even what went on in the interior of his own office, much less the interior of his own department, and nothing at all about the interior of Germany;

A Reichsbank President who was totally ignorant of what went in and out of the vaults of his bank;

And a Plenipotentiary for the War Economy who secretly marshaled the entire economy for armament, but had no idea it had anything to do with war.

This may seem like a fantastic exaggeration, but this is what you would actually be obliged to conclude if you were to acquit these defendants.

They do protest too much. They deny knowing what was common knowledge. They deny knowing plans and programs that were as public as "Mein Kampf" and the Party program. They deny even knowing the contents of documents they received and acted upon.

Nearly all the defendants take two or more conflicting positions. Let us illustrate the inconsistencies of their positions by the record of one defendant -- who, if pressed, would himself concede that he is the most intelligent, honorable and innocent man in the dock. That is Schacht. And this is the effect of his own testimony -- but let us not forget that I recite it not against him alone, but because most of its self-contradictions are found in the testimony of several defendants:

Schacht did not openly join the Nazi movement until it had won, nor openly desert it until it had lost. He admits that he never gave it public opposition, but asserts that he never gave it private loyalty. When we demand of himwhy he did not stop the criminal course of the regime in which he was a Minister, he says he had not a bit of influence. When we ask why he remained a member of the criminal regime, he tells us that by sticking on he expected to moderate its program. Like a Brahmin among untouchables, he could not bear to mingle with the Nazis socially, but never could he afford to separate from them politically. Of all the Nazi aggressions by which he now claims to have been shocked(152), there is not one that he did not support before the world with the weight of his name and prestige. Having armed Hitler to blackmail a continent, his answer now is to blame England and France for yielding.

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Schacht always fought for his position in a regime he now affects to despise. He sometimes disagreed with his Nazi confederates about what was expedient in reaching their goal, but he never dissented from the goal itself. When he did break with them in the twilight of the regime, it was over tactics, not principles. From then on he never ceased to urge others to risk their positions and their necks to forward his plots, but never on any occasion did he hazard either of his own. He now boasts that he personally would have shot Hitler if he had had the opportunity, but the German newsreel shows that even after the fall of France, when he faced the living Hitler, he stepped out of line to grasp the hand he now claims to loath and hung upon the words of the man he now says he thought unworthy of belief. Schacht says he steadily "sabotaged" the Hitler government.(153) Yes, the most relentless secret service in the world never detected him doing the regime any harm until long after he knew the war to be lost and the Nazis doomed. Schacht, who dealt in hedges all his life, always kept himself in a position to claim that he was in either camp. The plea for him is as specious on analysis as it is persuasive on first sight. Schacht represents the most dangerous and reprehensible type of opportunism -- that of the man of influential position who is ready to join a movement that he knows to be wrong because he thinks it is winning.

These defendants, unable to deny that they were the men in the very top ranks of power, and unable to deny that the crimes I have outlined actually happened, know that their own denials are incredible unless they can suggest someone who is guilty.

The defendants have been unanimous, when pressed, in shifting the blame on other men, sometimes on one and sometimes on another. But the names they have repeatedly picked are Hitler, Himmler, Heydrich, Goebbels and Bormann. All of these are dead or missing. No matter how hard we have pressed the defendants on the stand, they have never pointed the finger at a living man as guilty. It is a temptation to ponder the wondrous workings of a fate which has left only the guilty dead and only the innocent alive. It is almost too remarkable.

The chief villain on whom blame is placed -- some of the defendants vie with each other in producing appropriate epithets -- is Hitler. He is the man at whom nearly every defendant has pointed an accusing finger.

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I shall not dissent from this consensus, nor do I deny that all these dead and missing men shared the guilt. In crimes so reprehensible that degrees of guilt have lost their significance they may have played the most evil parts. But their guilt cannot exculpate the defendants. Hitler did not carry all responsibility to the grave with him. All the guilt is not wrapped in Himmler's shroud. It was these dead men whom these living chose to be their partners in this great conspiratorial brotherhood, and the crimes that they did together they must pay for one by one.

It may well be said that Hitler's final crime was against the land he had ruled. He was a mad messiah who started the war without cause and prolonged it without reason. If he could not rule he cared not what happened to Germany. As Fritzsche has told us from the stand, Hitler tried to use the defeat of Germany for the self-destruction of the German people.(154) He continued the fight when he knew it could not be won, and continuance meant only ruin. Speer, in this courtroom, has described it as follows:

"...The sacrifices which were made on both sides after January 1945 were without sense. The dead of this period will be the accusers of the man responsible for the continuation of that fight, Adolf Hitler, just as much as the destroyed cities, destroyed in that last phase, who had lost tremendous cultural values and tremendous numbers of dwellings... The German people, he said, remained faithful to Adolf Hitler until the end. He has betrayed them knowingly. He has tried to throw it into the abyss..."(155)

Hitler ordered every one else to fight to the last and then retreated into death by his own hand. But he left lifeas he lived it, a deceiver; he

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left the official report that he had died in battle. This was the man whom these defendants exalted to a Fuehrer. It was they who conspired to get him absolute authority over all of Germany. And in the end he and the system they created for him brought the ruin of them all. As stated by Speer on cross-examination:

> "...the tremendous danger, however, contained in this totalitarian system only became abundantly clear at the moment when we were approaching the end. It was then that one could see what the meaning of the principle was, namely, that every order should be carried out without any criticism. Everything. . . you have seen in the way of orders which were carried out without any consideration, did after all turn out to be mistakes ... This system -- let me put it like this -- to the end of the system it has become clear what tremendous dangers are contained in any such system, as such, quite apart from Hitler's principle. The combination of Hitler and this system, then, brought about this tremendous catastrophe to this world." (156)

But let me for a moment turn devil's advocate. I admit that Hitler was the chief villain. But for the defendants to put all blame on him is neither manly nor true. We know that even thehead of a state has the same limits to his senses and to the hours of his day as do lesser men. He must rely on others to be his eyes and ears as to most that goes on in a great empire. Other legs must run his errands; other hands must execute his plans. On whom did Hitler rely for such things more than upon these men in the dock? Who led him to believe he had an invincible air armada if not Goering? Who kept disagreeable facts from him? Did not Goering forbid Fieldmarshal Milch to warn Hitler that in his opinion Germany wasnot equal to the war upon Russia? (157) Did not Goering, according to Speer, relieve General Gallant of his air force command for speaking of the weaknesses and bungling of the air force?(158) Who led Hitler, utterly untraveled himself, to believe in the indecision and timidity of democratic peoples if not Ribbentrop, von Neurath, and von Papen? Who fed his illusion of German invincibility if not Keitel, Jodl, Raeder and Doenitz? Who kept his hatred of the Jews inflamed more than Streicher and Rosenberg? Who would Hitler say deceived him about conditions in concentration camps if not Kaltenbrunner, even as he would deceive us? These men had access to Hitler and often could control the information thatreached him and on which he must base his policy and his orders. They were the Praetorian Guard, and while they were under Caesar's orders, Caesar was always in their hands.

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If these dead men could take the witness stand and answer what has been said against them, we might have a less distorted picture of the parts played by these defendants. Imagine the stir that would occur in the dock if it should behold Adolf Hitler advancing to the witness box, or Himmler with an armful of dossiers, or Goebbels, or Bormann with the reports of his Party spies, or the murdered Roehm or Canaris. The ghoulish defense that the world is entitled to retribution only from thecadavers, is an argument worthy of the crimes at which it is directed.

We have presented to this Tribunal an affirmative case based on incriminating documents which are sufficient, if unexplained, to require a finding of guilt on Count One against each defendant. In the final analysis, the only question is whether the defendant's own testimony is to be credited as against the documents and other evidence of their guilt. What, then, is their testimony worth?

The fact is thatthe Nazi habit of economizing in the use of truth pulls the foundations out from under their own defenses. Lying has always been a highly approved Nazi technique. Hitler, in "Mein Kampf", advocated mendacity as a policy. Von Ribbentrop admits the use of the "diplomatic lie". (159) Keitel advised thatthe facts of rearmament be kept secret so that they could be denied at Geneva. (160) Raeder deceived about rebuilding the German navy in violation of Versailles.(161) Goering urged Ribbentrop to tell a "legal lie" to theBritish Foreign Office about the Anschluss, and in so doing only marshaled him the way he was going.(162) Goering gave his word of honor to the Czechs and proceeded to break it.(163) Even Speer proposed to deceive the French into revealing the specially trained among their prisoners. (164)

Nor is the lie direct the only means of falsehood. They all speak with a Nazi doubletalk with which to deceive the unwary. In the Nazi dictionary of sardonic euphemisms "Final solution" of the Jewish problem wasa phrase which meant extermination; "Special treatment" of prisoners of war meant killing; "Protective custody" meant concentration camps; "Duty labor" meant slave labor; and in order to "take a firm attitude" or "take positive measures" meant to act with unrestrained savagery. Before we accept their word at what seems to be its face, we must always look for hiddenmeanings.

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Goering assured us, on his oath, that the Reich Defense Council never met "as such".(165) When we produced the stenographic minutes of a meeting at which he presided and did most of the talking, he reminded us of the "as such" and explained this was not a meeting of the Council "as such" because other persons were present.(166) Goering denies "threatening" Czechoslovakia he only told President Hacha that he would "hate to bomb the beautiful city of Prague." (167)

Besides outright false statements and double talk, there are also other circumventions of truth in the nature of fantastic explanations and absurd professions. Streicher has solemnly maintained that his only thought with respect to the Jews was to resettle them on the island of Madagascar. (168) His reason for destroying synagogues, he blandly said, was only because they were architecturally offensive.(169) Rosenberg was stated by his counsel to have always had in mind a "chivalrous solution" to the Jewish problem. (170) When it was necessary to remove Schuschnigg after the Anschluss, Ribbentrop would have had us believe that the Austrian Chancellor was resting at a "villa". It was left to cross-examination to reveal that the "villa" was Buchenwald Concentration Camp. (171) The record is full of other examples of dissimulations and evasions. Even Schacht showed that he, too, had adopted the Nazi attitude that truth is any story which succeeds. Confronted on cross-examination with a long record of broken vows and false words, he declared in justification - and I quote from the record:

> "I think you can score many more successes when you want to lead someone if you don't tell them the truth than if you tell them the truth." (172)

This was the philosophy of the National Socialists. When for years they have deceived the world, and masked falsehood with plausibilities, can anyone be surprised that they continue the habits of a lifetime in this dock? Credibility is one of the main issues of this trial. Only those who have failed to learn the bitter lessons of the last decade can doubt that men who have always played on the unsuspecting credulity of generous opponents would not hesitate to do the same, now.

It is against such a background that these defendants now ask this Tribunal to say that they are not guilty of planning, executing, or conspiring to commit this long list of crimes and wrongs. They stand before

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the record of this trial as blood-stained Gloucester stood by the body of his slain King. He begged of the widow, as they beg of you: "Say I slewthem not." And the Queen replied, "Then say they werenot slain. But dead they are ...." If you were to say of these men that they are not guilty, it would be as true to say that there has been no war, there are no slain, there has been no crime.

THE PRESIDENT: I call upon the Chief Prosecutor for the United Kingdom of Great Britain.

MR. JUSTICEJACKSON: Would it be agreeable, Your Honors, if Sir Hartley Shawcross should start his address after the recess?

THE PRESIDENT: Yes. Then we will sit again at a quarter to two.

MR. JUSTICE JACKSON: And may I add this for thepurpose of the record. I have filed with the Tribunal and furnished to Counsel copies of the summation with footnotes tothe record. Those footnotes are designed, of course, to direct the attention of adversaries and of the Tribunal to the supporting data in the record. I thought they might be helpful in reading it.

THE PRESIDENT: Thank you.

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THE CRIMES OF THE NAZI REGIME - FOOTNOTES

Footnote Number

1. English transcript, p. 5844.

2. Goering, Reobnstruction of a Nationa, 1934. (2344-PS, USA 233, Tr.p. 1399)

3. Prime Minister Goering's Press Conference, published in Voelkischer Beobachter, Berlin edition, 23-24 July 1933, p.1 (2494-PS, USA-F, Tr.p. 255). Goering has admitted excesses in connection with the seizure of power (Tr.p. 5838).

4. Law about changing rules of Criminal Law and Criminal Procedure of 24 April 1934, 1934 Reichsgesetzblatt, Part I, p.34 (2548-PS, USA-F, Tr. -.255). (Tr. O. 5838).

5. Decree of the Reich President for protection against treacherous attacks on the government of the Nationalist movement, 21 March 1933. 1933 Reichsgestzblatt, Part I, p. 135, (1652-PS, USA-F, Tr.p. 255).

6. Decree of the Reich President for the Protection of the People and State, 28 February 1933, 1933 Reichsgesetzblatt, Part I, p. 83 (1390-PS, USA-B-Tr.p.255). "Section 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Thus, restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association, and violations of the privacy of postal, telegraphic, and telephinc communications, and warrants for house-searchers, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed...Whoever provokes or incites to an act contrary to public welfare is to be punished with a penitentiary sentence, under mitigating circumstances, with imprisonment of not less than three months."

7. Law to change the Penal Code of 28 June 1935, 1935 Reichsgesetzblatt, Part I, p. 839. (1962-PS, USA-F, Tr.p. 255). "Any person who commits an act which the law declares to be punishable or which is deserving of penalty according to the fundamental conceptions of the penal law and sound popular feeling, shall be punished. If these is no penal law directly covering an act, it shall be puhished under that law which most closely fits, in regards to fundamental conception".

8. Extract from "Germany's Road to Freedom", as published in Documents of German Politics, Vol. 3 (2549-PS, USA-F, Tr. p. 255) "National Socialism substitutes for the conception of formal wrong the idea of factual wrong, it considers every attack against the welfare of the people's community, every violation of the requirements of the life of a nation as wrong. Therefore wrong may be committed in the future in Germany even in cases when no law threatens it with punishment. Even withouth the threat of punishment, every violation of the goals of life which the community sets up for itself is a wrong".

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Footnote Number

9. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr.p. 255). Ten Years of Security Police and SA. (1680-PS, USA-477, Tr.p.1892).

10. Transcript p. 6073. This bureau was camouflaged under the name of "Research Office of the Airforce". (Tr. p.5880).

11. Decree of the Reich President for the Protection of the People and State, 28 February 1933, 1933 Reichsgesetzblatt, Part I, p. 83 (1390-PS, USA-F, Tr. p. 255). Supra, Note 5.

12. Organizationbuch der NSDAP, 1943 edition, pp.99-104 (1893-PS, USA-323, Tr.p. 1578).

13. Meaning and Tasks of the Secret State Police, published in The Archives, January 1936, Vol. 23-24, p. 1342 (1956-PS, USA-F, Tr.p.255).

14. Original Protective Custody Order served on Dr. R. Kempner, 15 March 1935 (2499-PS, USA-232, Tr.p.1399). Extract from article "Legislation and Judiciary in Third Reich" from Journal of the Academy for German Law, 1936, pp. 141-142 (2533-PS, USA-F, Tr. p.235).

15. Law on the Secret State Police of 10 February 1936, Prussian Gesetzemhhung, p. 21. "Orders in matters of the Secret State Police are not subject to review of the administrative Courts". (2107-PS, Tr.p.1904). Summary of decisions of the Supreme Administrative Court, 1935 Reichsverwaltungsblatt, Vol. 56, No. 29, pp. 577-578, 20 July 1935 (2347-PS, Tr.-. 1904).

16. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr.p.255).

17. Letter from Guertner to Mutschmann, 18 January 1935, concerning charges against members of camp personnel of protective custody Camp Hohnstein (783-PS, USA-731, Tr.p.255). Letters from Minister of Justice to Hess and SA Chief of Staff, 5 June 1935, concerning penal proceedings against merchant and SA Leader and 22 companions because of inflicting bodily injury on duty (784-PS, USA-732, Tr.p.255). Memorandum of Guerner concerning legal proceedings against the camp personnel of concentration camp Hohnstein (785-PS, USA-733, Tr.p.255). Minister of Justice memorandum, 29 November 1935, concerning pardon of those sentenced in connection with mistreatment in Hohnstein concentration camp. (786-PS, USA-734, Tr.p.255).

18. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr.p.255).

19. Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr.p.255). Law amending regulations of criminal law and criminal procedure, 24 April 1934, 1934 Reichsgesetzblatt, Part I, p. 341 (2014-PS, USA-C, Tr.p.255). Law on People's Court and on 25th Amendment to Salary Law of 18 April 1936, 1936 Reichsgesetzblatt, Part I, p. 169 (2342-PS, USA-C, Tr.p. 255).

20. "The Nazi Plan", excerpt of script of a motion picture composed of captured German film. (3054-PS, USA-167, Tr.p.1264).

21. Decree of the Government concerning formation of Special Courts, 21 March 1933, 1933 Reichsgesetzblatt, Part I, pp.136-137. (2076-PS, USA-C, Tr.p. 255). Decree concerning the extension of the Jurisdiction of Special Courts, 20 November 1938. 1938 Reichsgesetzblatt, Part I, p. 1632, (2056-PS, USA-C, Tr.p.255). Affidavit of Dr. Hans Anschuetz, 17 November 1945 (2967-PS, USA-756, Tr.p.255).

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Footnote Number

22 Extract from German Justice, a legal periodical, 10th year, Edition A, No.42, 16 October 1942. "The judge is therefore not the supervisor of, but the direct assistant in the Administration of the State. He is responsible to the leadership of the State (Staatsfuhring) within his sphere of duty for the conservation of the national community. By protecting the national values (Volkische Werte) and eliminating (dangerous elements from the community of the people) he is, in this respect, aking to the political Volkische Selbsterhaltung). This point of view must be decisive for the judge. The judge taking it for his guiding principle will find many a decision which seemed very difficult to be solved at first, facilitated." (2482-PS, USA-C, Tr.p.255). Extract from pamhlet, "Judges Letters", concerning judgement of Lower Court 24 April 1942, on concealment of Jewish Identification. (D-229, USA-C, Tr.p.255).

23. Lecture of Major-General Thomas delivered 24 May 1939, at the Foreign Office (EC-28, USA-760, Tr.pp.275, 5124).

24. The treaties and assurances applicable to each are specified in Appendix C of the Indictment and remain uncontradicted.

25. English transcript p. 5980. "The Hague Convention was for land warfare. When I scanned it over on the eve of the Polish campaign, I was reading the Articles and I was sorry that I had not studied them much sooner. If I had done so I would have told the Fuhrer that with these rules as they had been put down, paragraph by pargraph, a modern war could not be waged, but that in a modern war, with its technical improvments, the stipulations of 1906 and 1907 would have to be changed in order to have a new type of warfare."

26. English Transcrip p. 6016.

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Footnote Number

27. Memorandum of 15 September 1941, from Canaris to Keitel concerning an OKW order regulating the treatment of Soviet prisoners-of-war (EC-338, USSR-366, Tr.p.4441). "The Geneva Convention for the treatment of prisoners-of-war is not binding in the relationship between Germany and the USSR, therefore only the principles of general international law on the treatment of prisoners-of-war apply. Since the 18th century these have gradually been estalished along the lines that war captivity is neither revenge nor punishment, but solely protective custody (Sicherheitsschaft) the only purpose of which is to prevent the prisoners of war from a further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people; this is also in the interest of all belligerents in order to prevent mistreatment of their own

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27. (cont'd). soldiers in case of capture.....The instructions are very general. But if one considers their basic principles the expressly approved measures will result in arbitrary mistreatments and killings, the formal prohibition of arbitrary action notwithstanding."

28. Hitler Commando Order, 18 October 1942 (498-PS, USA-501, Tr. p. 1944, 2173). Night and Fog Decrees, 7 and 12 December 1942 (L-90, USA-503, Tr. p. 1945). Minister of Labor Order on employment of French prisoners of war in armament industry, August 1941 (3005-PS, USA-213, Tr. p. 3010). Himmler Order to protect lynchers of allied fliers, 10 August 1943 (R-110, USA-333, Tr. p. 1624).

29. Decree appointing Sauckel General Plenipotentiary for Manpower, 21 March 1942, and decree of Goering conferring certain powers on Sauckel, 27 March 1942. 19[illegible] Reichsgesetzblatt, Part I, pp. 179-180 (1666-PS, USA-208, pp. 1337, 4063).

30. Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply. "Our best new engine is made 88% by Russian prisoners of war and the other 12% by German men and women.... The list of the shirkers should be entrusted to Himmler's trustworthy hands who will make them work all right." (Milch, p. 26) R-124, USA-179, Tr. pp. 1313, 1320.

31. Top secret memorandum signed by Brautigam, 25 October 1942, concerning conditions in Russia (294-PS, USA-195, Tr. p. 1293).

32. Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply. (R-124, p. 22, USA 179, Tr. pp. 1286, 1293, 1309, 2989.) By an official directive, "Estates of those who refuse to work are to be burned, their relatives are to be arrested as hostages and to be brought to forced labor camps", and the burning of homes in connection with labor conscription was therefore not considered culpable. Letter from Rosenberg Ministry, 12 November 1943, concerning burning of houses in Mueller's district. (290-PS, USA-189, Tr. p. 1304). The burning down of houses was a method used to force citizens in occupied territories into Reich labor. Letter from Rabb to Reichminister for Occupied Eastern Territories, 7 June 1944,

concerning burning of houses in Wassilkow district. (254-PS, USA-188, Tr. p. 1300). Forced labor agents caught persons attending churches and theaters and transported them to the Reich. Lammers report to Himmler, 12 April 1943, concerning the situation in the Government General (2220-PS, USA-175, Tr. p. 1275).

33. Report to Reich Ministry for Occupied Eastern Territories, 7 October 1942, concerning treatment of Ukrainian Specialists (054-PS, USA-198, Tr. p. 1314). Interdepartmental report of Ministry for Occupied Eastern Territories, 30 September 1942, concerning status of Eastern laborers. "In this train women gave birth to babies who were thrown out of the windows during the journey, people having tuberculosis and venereal diseases rode in the same car, dying people lay in freight cars without straw, and one of the dead was thrown on the railroad embankment. The same must have occurred in other returning transports," (084-PS, USA-199, Tr. p. 1317).

34. Sauckel's labor Mobilization Program 20 April 1942. "Apart from the prisoners of war still in the occupied territories, we must, therefore, requisition skilled or unskilled male and female labor from the Soviet territory from the age of 15 up for the labor mobilization." p. 7 (016-PS, USA-168, Tr. p. 1319).

35. Affidavit of Edward L. Deuss, 1 November 1945, concerning approximate number of foreign workers for German War Effort in Old Reich (2520-PS, USA-197, Tr. p. 1312).

36. Memorandum to Mr. Kupe, 14 March 1942, concerning employment of Russians. (D-316, USA-201, Tr. p. 1320).

37. Affidavit of Dr. Wilhelm Jaeger, 15 October 1945. "Conditions in all of these camps were extremely bad. The camps were greatly overcrowded. In some camps there were twice as many people in a barrack as health conditions permitted...Camp Humboldstrasse has been inhabited by Italian prisoners of war. After it had been destroyed by an air raid, the Italians were removed and 600 Jewish females from Buchenwald Concentration Camp were brought in to work at the Krupp factories. Upon my first visit at Camp Humboldstrasse, I found these females suffering from open festering wounds and other diseases. I was the first doctor they had seen for at least a fortnight.

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There was no doctor in attendance at the Camp. There were no medical supplies in the Camp. They had no shoes and went about in their bare feet. The sole clothing of each consisted of a sack with holes for their arms and head. Their hair was shorn. The Camp was surrounded by barbed wire and closely guarded by SS guards." pp. 1, 5. (D-288, USA-202, Tr. p. 1322).

38. Secret Order of Reichsfuehrer SS, 20 February 1942, concerning commitment of manpower from the East. "In severe case, that is in such cases where the measures at the disposal of the leader of the guard do not suffice, the state police office has to act with its means. Accordingly, they will be treated, as a rule, only with strict measures, that is with transfer to a concentration camp or with special treatment...Special treatment is hanging." (3040-PS, USA-207, Tr. p. 1336).

39. Order signed Christiansen, 19 March 1943, to all group leaders of Security Service, and record of telephone conversations signed by Stap 11 March 1943 (3012-PS, USA-190, Tr. pp. 1304, 12200). Letter of Terboven to Goering, dated 1 May 1942. (R. 134, RD-293, Tr.p. 6235). Goering has admitted the excesses in occupied territories: I do not in any way wish todispute that things took place which may be debated as far as international law is concerned, and other things occurred which under every circumstance may be considered and must be considered as excesses." (Tr. p. 5932).

40. Excerpts from Frank's Diary (USSR-223) (English translation p.43).

41. Stenographic report on conference between Goering and Reich Commissioners for Occupied Territories, 8 August 1942. (USSR-170, Tr. p. 5720; EC-317, Tr. pp. 5903, 5904).

42. Report to Fuehrer regarding confiscated art treasures, 20 March 1941. (014-PS, USA-784, Tr. p. 6213). Field Marshal Kesselring, Goering's subordinate, testified that his method of punishing the small-scale looting of common soldiers under his command was by shooting on the spot. (Tr. p. 5775).

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43. Hague Convention IV, Articles 43, 46, 47, 50, 52.

44. Affidavit of Dr. Rudolf Kastner, former president of the Hungarian Zionist Organization, 13 September 1945. (2605-PS, USA-242, Tr. pp. 1408, 1409).

45. Affidavit of Dr. Wilhelm Hoettl, 5 November 1945. (2738-PS, Tr. p. 1502). Affidavits of Hermann Graebe. "Moennikes and I went direct to the pits. Nobody bothered us. Now I heard rifle shots in quick succession, from behind one of the earth mounds. The people who had getoff the trucks - men, women, and children of all ages - had to undress upon the orders of an SS-man, who carried a riding or dog whip. They had to put down their clothes in fixed places, sorted according to shoes, top clothing. I saw a heap of shoes of about 800 to 1000 pairs, great piles of under-linen and clothing. Without screaming or weeping these people undressed, stood around in family groups, kissed each other, said farewells and waited for a sign from another SS-man, who stood near the pit, also with a whip in his hand. During the 15 minutes that I stood near the pit I heard no complaint orplea for mercy. I watched a family of about 8 persons, a man and woman, both about 50 with their children of about 1, 8 and 10, and two grown-up daughters of about 20 to 24. An old woman with snow-white hair was holding the one-year old child in her arms and singing to it, and tickling it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. The father pointed toward the sky, stroked his head, and seemed to explain something to him. At that moment the SS-man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound. Among them was the family, which I have mentioned. I well remember a girl, slim and with black hair,

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45 (Cont'd) who, as she passed close to me, pointed to herself and said, "23". I walked around the mound, and found myself confronted by a tremend grave. People were closely wedged together and lying on top of eac other so that only their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was alread 2/3 full. I estimated that it already contained about 1000 people. I looked for the man who did the shooting. He was an SS-man, who s at the edge of the narrow end of the pit, his feet dangling into th pit. He had a tommy gun on his knees and was smoking a cigarette. The people, completely naked, went down some steps which were cut i the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS-man directed them. They down in front of the dead or injured people; some caressed those w were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies wer twitching or the heads lying already motionless on top of the bodie that lay before them. Blood was running from their necks. I was surprised that I was not ordered away, but I saw that there were tw or three postmen in uniform nearby. The next batch was approachin already. They went down into the pit, lined themselves up against the previous victims and were shot. When I wlaked back, round the mound I noticed another truck-load of people which had just arrive This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by others who were alr naked, while two people held her up. The woman appeared to be par lyzed. The naked people carried the woman around the mound. I le with Moennikes and drove in my car back to Dubno."

(1992-PS, pp. 2,3; USA-494, Tr. p. 1922).

46. SD Inspector Bierkamp's letter, 12 December 1941, to RSHA, enclosing co of secret decree signed by Bormann, entitled, "Relationship of National Socialism and Christianity."

(D-75, USA-348, Tr. p. 1637).

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47. Extracts from "The Myth of the 20th Centnry", by Alfred Rosenberg, 1941. "A German religious movement which would like to develop into a folk-church will have to declare that the idea of neighborly love is unconditionally to be subordineted to the idea of national honor, that no act of a German church may be approved which does not primarily serve the safeguarding of the folkdom." p. 608 (2349-PS, USA-352, Tr. p. 1642).

48. Documents on RSHA meeting concerning the study and treatment of church positions. (1815-PS, USA-510, Tr. p. 1956).

49. Secret letter, 21 April 1942, from SS to all concentration camp command concerning treatment of priests (1164-S, USA-736, Tr. p. 255). Report from the Bavarian Political Police to the Gestapo, Berlin, 24 August 1934, concerning National mourning on occasion of death of von Hindenbu (1521-PS,USA-740, Tr. p. 255). Letter from Kerrl to Minister of States 23 July 1938, with enclosures dealing with persecution of Bishop Sproll (849-PS,USA-354,Tr. p. 1644). Gestapo telegram from Berlin to Nurnberg 24 July 1938, dealing with demonstrations against Boshop Sproll in Rottburg (848-PS, USA-353,Tr. p. 1642). Goering has admitted the policy of sending clergyment to concentration camps. (Tr.p. 5858).

50. Gestapo order, 20 January 1938, dissolving and confiscating property of Catholic Youth Women's Organizations in Bavaria. (1481-PS,USA-737, Tr. p. 255). See also Tr. p. 5846.

51. Order of Frick, 6 November 1934, addressed inter alios to Prussian Gestapo prohibiting publication of Protestant Church announcements. (1498-PS USA-739, Tr.p. 255).

52. Bormann's letter to Rosenberg enclosing copy of letter, 24 January 193 to Minister of Education, requesting restriction or elimination of theological faculties. (116-PS,USA-685, Tr. p. 2792). Bormann's letter to

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Rosenberg, 17 April 1939, enclosing copy of Minister of Education lette 6 April 1939, on elimination of theological faculties in various univer sities, (122-PS,USA-362, Tr. p. 1658).

53. Secret letter, 20 July 1933, to provincial governments and the Prussian Gestapo from Frick, concerning Confessional Youth Organizations. (1482 USA-738, Tr. p. 255). Gestapo order 20 January 1938, dissolving and confiscating property of Catholic Youth Women's Organizations in Bavaria. (1481-PS,USA-737, Tr. p. 255). State Police Order, 28 May 1934 at Dusseldorf, signed Schmid, concerning sanction of denominational youth and professional associations and distribution of publications in churc (r-145,USA-745, Tr. p. 255).

54. Report by Headquarters, Third United States Army, 21 June 1945, concern Flossenburg Concentration Camp. (2309-PS,USA-245, Tr. p. 1398, 1412). Affidavit of Hans Marsalak, 8 April 1946, concerning Mauthausen Concent tion Camp and dying statement of Franz Ziereis, the Commandant. (3870-P USA-797, Tr. p. 7699). American concentration camp films (2430-PS,USA-79, Tr. p. 593). Soviet atrocity films (USSR-81, Tr. p. 4673). Affida vit of Rudolf Franz Ferdinand Hoess, 5 April 1946 : "... I commanded Au chwitz until 1 December 1943, and estimate that at least 2,500,000 vict were executed and exterminated there by gassing and buring, and at leas another half million succumbed to starvation and disease making a total dead of anout 3,000,000. This figure represents about 70 or 80 % of al persons sent to Auschwitz as prisoners, the remainder having been selec and used for slave labor in the concentration camp industries. Include among the executed and burnt were approximately 20,000 Russian prisoner of war (previously screened out of Prisoner of War cages by the Gestapo who were delivered at Auschwitz in Wehrmacht transports operated by re lar Wehrmacht officers and men. The remainder of the total number of victims included about 100,000 German Jews, and great numbers of citize mostly Jewish from Holland, France, Belgium, Poland, Hungary, Cezchosl kia, Greece, or other countries.

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We executed about 400,000 Hungarian Jews alone at Auschwitz in the summe of 1944 .... I visited Teblinka to find out how they carried out their extermination. The Camp Commandant at Treblinka told me that he had lic dated 80,000 in the course of one-half year. He was principally concern with liquidating all the Jews from the Warsaw Ghetto. He used monoxide gas and I did not think that his methods were very efficient. So when I set up the extermination buildin at Auschwitz, I cused Cyclon B, which a crystallized Prussic Acid which we dropped into the death chamber fro small opening. It took from 3 t 15 minutes to kill the people in the chamber depending upon climatic conditions. We knew when the people wer dead because their screamin stopped. We usu ally waited about one hal hour before we opened the doors and removed the bodies. After the bodi were removed our special commandos took off the rings and extracted the gold from the teeth of the corpses.

Another improvement we made over Treblinka was that we built our gas chambers to accommodate 2,000 people at one time, whereas at Treblinka their 10 gas chambers only accommodated 200 people each. The way we selected our victims was as follows : we had two SS doctors on duty at Auschwitz to examine the incomin transports of prisoners. The prisoner would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the Camp. Others were sent immediately to the extermination plants. Children of tender years were invariable exterminated since by reason of their youth they were unable to work. Still another improvement we made over Trebli ka was that at Treblinka the victims almost always knew that they were t be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousin process. Of course, frequently they realized our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide th children under the clothes but of course when we found them we would se the children to be exterminated. We were required to carry out these

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exterminations in secrecy but of course the foul and nauseating stench from the continuous burning of bodies permeated the entire area and all of the people living in the surrounding communities knew that extermina tions were going on at Auschwitz ". (3868-PS,USA-819, Tr.p. 7810).

55. Testimony of Witness Blaha. (Tr. pp. 2592, 2636).
Testimony of Witness Hoess. (Tr. pp. 7785, 7820.)

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56. Testimony of the Defendant Funk. "... And when these measures of terror and violence against Jews were put up to me, I suffered a nervous breakdown because at the moment it came to my mind with all clearness that from here on the catastrophe took its course all the way up to the terrible and atrocious things about which we have heard here and about which I knew only in part from the time of my captivity. I felt ashamed and the feeling of guilt at that moment and I do feel the same way today, but too late." (Tr. pp. 9042-3). Von Schirach has testified that "Hitler's racial policy was a crime" (Tr. p. 1295) and that Auschwitz "is the greatest and most devilish mass murder of history." (Tr. p. 10293)

57. Testimony of Frank. "... I myself have never installed an extermination camp for Jews or demanded that they should be installed, but if Adolf Hitler personally has turned that dreadful responsibility over to those people of his, then it must be mine too." (Tr. p. 8099).

58. English transcript p. 13116.

59. Hitler "Mein Kampf." "In regard to this point I should like to make the following statement: To demand that the 1914 frontiers should be restored is a glaring political absurdity that is fraught with such consequences as to make the claim itself appear criminal. The confines of the Reich as they existed in 1914 were throughly illogical....We National Socialists must stick firmly to the aim that we have set for our foreign policy, namely, that the German people must be assured the territorial area which is necessary for it to exist on this earth....The territory on which one day our German peasants will be able to bring forth and nourish their sturdy sons will justify the blood of the sons of the peasant that has to be shed today." (GB-128, Tr. pp. 2281-2).

60. Hitler, "Mein Kampf" (GB-128, Tr. p. 2285).

61. Hitler, "Mein Kampf." "The soil on which we now live was not a gift bestowed by Heaven on our forefathers. But they had to

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conquer it by risking their lives. So also in the future our people will not obtain territory, and therewith the means of existence, as a favor from any other people, but will have to win it by the power of a triumphant sword." (GB-128, Tr. p.2278).

62. English transcript, pp.6068-9.

63. English transcript, p.6071.

64. Affidavit of Schnitzler, 10 November 1945 (EC-439, USA 618, Tr. pp. 282, 283, 2532.)

65. Letter from Krupp to Hitler, 25 April 1933, with enclosure (D-157, USA-765, Tr. pp.299, 5124).

66. Krupp speech "Thoughts about the Industrial Enterpriser," January 1944. "...I have already often repeated orally as well as in writing, and today I also want to restate to this group that, according to the terms of the Dictate of Versailles (Diktat) Krupp had to destroy and demolish considerable quahtities of machines and utensils of all kinds. It is the one great merit of the entire German war economy that it did not remain idle during thos bad year. even though its activity could not be brought to light for obvious reasons. Through years of secret work, scientific and basic ground work was laid, in order to be ready again to work for the German Armed Forces at the appointed hour, without loss of time or experienc (D-317, USA 770, Tr. p.289).

67. The Fifth Day of the Party Congress, from Voelkischer Beobachter, Munich (Southern German) Edition, Issue 258, 14 September 1936 (2283-PS, USA 337, Tr. p.255). The Social Life of the New Germany with Special Consideration of the German Labor Front, containing principal parts of the two NSDAP orders directing seizure of unions in 1933, pp. 51-54 (302-PS, USA 326, Tr. p.1600). Organization Book of the NSDAP, the NSBO, p. 185 (2271-PS, USA 328, Tr.p.255). Affidavits of Josef Simon, Chairman of German Shoemakers Union in 1933 (2335-Ps, USA 749, Tr. p.255). Affidavits of Lorenz Hagan, Chairman of Local Committee, German Trade Unions, Nurnberg (2334-PS, USA 238, Tr. p.1405). Affidavit of Mathias Lex, deputy president of the German Shoemakers Union (2928-PS, USA 239, Tr. pp.1405, 2258)

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Affidavit, 17 October 1945, of Gustav Schiefer, Chairman of General German Trade Union Association, Local Committee, Munich 1933 (2277-PS, USA 748, Tr. p. 255). Death certificate, Flossenburg Concentration Camp, concerning union leader Staimer and official letter to his wife, 22 December 1941 (2332-PS, Tr. p.255). Death certificate, Flossenburg Concentration Camp, concerning union leader Hermann, and official letter to his wife, 29 December 1941 (2333-PS, USA 744, Tr. p.255).

68. National Socialist Party Correspondence, release of 2 May 1933, p.1 (2224-PS, USA 364, Tr. pp. 1662-4). Voelkischer Beobachter (People's Observer) Munich edition, 17 May 1933, Fuehrer Edict, p.1 (1940-PS Tr. p. 255). The German Labor Front, Nature, Goal, Means -- Official publication of the German Labor Front, footnote on p.11 (2275-PS, Tr. p.255).

69. Law concerning trustees of labor, 19 May 1933, 1933 Reichsgesetzblatt, Part I, p.285 (405-PS, Tr. p.255).

70. Speech by Ley published in Forge of the Sword, with an introduction by Marshal Goering, pp.14-17 (1939-PS, Tr. p.255).

71. Minutes of second session of Working Committee of the Reich Defense held on 26 April 1933 (EC-177, USA 390, Tr. pp.1699, 1727).

72. Minutes of conference of sixth session of Working Committee of Reich Defense Council, held on 23 and 24 January 1934 (EC 404, USA 764, Tr. pp.291, 5124).

73. Directive from Blomberg to Supreme Commanders of Army, Navy and Air Forces, 24 June 1935; accompanied by copy of Reich Defense Law of 21 May 1935 and copy of Decision of Reich Cabinet of 12 May 1935 on the Council for defense of the Reich (2261-PS, USA 24, Tr. pp.277, 292).

74. Memorandum report about the Four Year plan and preparation of the war economy, 30 December 1936 (EC-408, USA 579, Tr. pp.279, 281, 287, 5874, 6083).

75. Report on state of preparation for war economic mobilization as of 30 September 1934. (EC-128, USA 623, Tr. pp.295, 2537).

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76. Law against Economic Sabotage, 1936 Reichsgesetzblatt, Part I, p.999.

77. Affidavit of Puhl, 2 November 1945. (EC-436, USA-620, Tr. pp.255, 2535).

78. Minutes of meeting of council of ministers on 27 May 1936 (1301-PS, p.15, USA 123, Tr. p.299).

79. English transcript, p.8342.

80. English transcript, p.2135.

81. Excerpts from Diary kept by General Jodl, January 1937 to August 1939 (1730-PS, USA 72, Tr. pp.556, 1157).

82. Notes on a conference with Hitler in the Reich Chancellery, Berlin, 5 November 1937, signed by Hitler's Adjutant, Hossbach, and dated 10 November 1937 (386-PS, USA 25, Tr. pp.336, 735, 2137).

83. File of papers on Case Green (the plan for the attack on Czechoslovakia) kept by Schmundt, Hitler's Adjutant, April-October 1938 (388-PS, USA 26, Tr. pp.735, 741-748, 760-765, 769-776, 793, 789-807).

84. Excerpts from Diary kept by General Jodl, January 1937 to August 1939 (1780-PS, USA 72, Tr. pp.556, 1157).

85. File of papers on Case Green (the plan for the attack on Czechoslovakia kept by Schmundt, Hitler's Adjutant, April-October 1938 (388-PS, USA 26, Tr. pp. 744).

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86. Documents found in official Navy files containing notes year by year, from 1927 to 1940, on reconstruction of the German Navy, and dated 18 February 1938, 8 March 1938, September 1938. (C-23, USA-49, Tr. p. 449).

87. "Germany neither intends or wishes to interfere in the internal affairs of Austria, to annex Austria, or to unite with Austria." Berlin, May 21, 1935, Voelkischer Beobachter, May 22, 1935. "Immediately after the Anschluss, I informed Yugoslavia that the frontier in common with that country would henceforth be regarded as unalterable by Germany and that we wished to live with her in peace and friendship." (Berlin, Oct. 6, 1938, Voelkischer Beobachter, October 7, 1938. "I have given binding declarations to a number of states. None of these can complain that even a trace of a demand contrary thereto has ever been made to them by Germany. None of the Scandinavian statesmen, for example, can contend that the German Government or that German public opinion has ever made a demand which was incompatible with the sovereignty and integrity of their state." Berlin, April 28, 1939, Voelkischer Beobachter, April 29, 1939. "We have given guarantees to the states in the West and have guaranteed to all contiguous neighbors the inviolability of their territory as far as Germany is concerned. That is not a phrase; that is our sacred will." Berlin, September 26, 1938, Voelkischer Beobachter, September 27, 1938. "Without taking the past into account, Germany has concluded a non-aggression pact with Poland. This is more than a valuable contribution to European peace, and we shall adhere to it unconditionally. We only hope that it will be renewed and continued uninterruptedly and that it will deepen the friendly relations between the two countries. With the understanding and heartfelt friendship of genuine nationalists we recognize Poland as the home of a great and nationally conscious people." Berlin, May 21, 1935, Voelkischer Beobachter, May 22, 1935. "Germany has steadily given her assurance, and I solemnly repeat this assurance here, that between ourselves and France, for example, there are no grounds for quarrel that are humanly thinkable." Berlin, January 30, 1937, Voelkischer Beobachter, January 31, 1937.

88. Notes on conference between Goering, Mussolini, and Ciano, 15 April 1939 (1874-PS, USA-125, Tr. p. 929).

89. Note for Reichminister, 26 August 1938 (TC-76, GB-31, Tr. p. 980).

90. Speech of Fuehrer at a conference, 23 November 1933, to which all Supreme Commanders were ordered (789-PS, USA-23, Tr. pp. 275, 931).

91. Minutes of conference with Goering at the Air Ministry, 14 October 1938, concerning acceleration of rearmament (1301-PS, USA-123, Tr. pp. 295, 296, 299, 300, 2555, 2556, 2558, 2559, 5126.) Notes on conference with

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Goering in Westerland on 26 July 1939, signed Mueller, dated Berlin, 27 July 1939 (R-133, USA-124, Tr. p. 928)

92. Minutes of conference, 23 May 1939 "Indoctrination on the Political Situation and Future Aims." (L-79, USA-27, Tr. pp. 359, 408, 930).

93. Minutes of Second Meeting of Reich Defense Council, 23 June 1939 (3787-PS, USA-782, Tr. pp. 6406, 6167, 12875-12886).

94. Minutes of conference, 23 May 1939, "Indoctrination on the Political Situation and Future Aims." (L-79, USA-27, Tr. pp. 359, 408, 930).

95. Letter from Frank to Goering, 25 January 1940 (1375-PS, USA-172, Tr. p. 1273).

96. Thierack's notes, 18 September 1942, on discussion with Himmler concerning delivery of Jews to Himmler for extermination through work (654-PS, US -218, Tr. pp. 1350, 1950). Letter from Minister of Justice to Prosecutors, 1 April 1944, concerning Poles and Jews who are released from Penal institutions of Department of Justice (701-PS, USA-497, Tr. p. 1940).

97. Directive of 27 April 1943 to Commanders of Concentration Camps, regarding executions of prisoners (1933-PS, USA-459, Tr. p. 1844).

98. Copy of telegram from Mueller to Himmler, 16 December 1942, concerning recruiting Jewish labor (1472-PS, USA-279, Tr. p. 14047. Mueller's order, 17 December 1942, concerning prisoners qualified for work to be sent to concentration camps (1063-D-PS, USA-219, Tr. p. 1354).

99. Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply, p. 36 (R-124, USA-179, Tr. pp. 1286, 1293, 1309, 2989).

100. Report signed by Doenitz, 1944, giving support to Navy and Merchant Marine. (C-195, GB-211, Tr. p. 2709).

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101. Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply (R-124, USA-179, P. 32 Tr. pp. 1293, 1286, 1309).

102. Memorandum of 15 September 1941 from Canaris to Keitel concerning an OKW Order regulating the treatment of Soviet prisoners of war (EC-338, USSR-356, Tr. p. 4441)

103. English transcript, p. 6016.

104. Examples of violations of International Law and proposed counter propaganda, issued by OKW, 1 October 1938, (C-2, USA-90, Tr. p. 2959).

105. OKW circular entitled Direction of War as Problem of Organization, 19 April 1938 (L-211, GB-161, Tr. p. 2397).

106. English transcript p. 5786.

107. Report by Raeder to Hitler, 16 October 1939 (C-157, GB-224, Tr. p. 2734).

108. Extract from Befehlshaber der U-bootes; Secret Standing Order No. 154 signed by Doenitz. (D-642, GB-196, Tr. p. 2663).

Operation Order "Atlantic" No. 56 for U-Boats in Atlantic, 7 October 1943 (D-663, GB-200, Tr. p. 2666).

109. English transcript, p. 6069.

110. English transcript, p. 5843.

111. English transcript, p. 6050-6052.

112. Extracts from testimony of Goering; "As soon as we had come into power we were decided to keep that power under all circumstances... we could not leave this to the play of coincidence by way of elections and parliamentary majorities...." (Tr. p. 5824). "The Laender Parliaments... I considered entirely superfluous...I could not understand why so many different authorities should exist which, with their unnecessary frictions, discussions, arguments, could only prevent constructive work... A further point in the strengthening of power was the elimination of the Reichstag as a parliament... In some cases we suggested to the

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former parties they dissolve themselves, because they had no purpose, and those who would not dissolve themselves were dissolved by us." (Tr. p. 5828).

"...Towards the further strengthening of power, those laws were established which...did away with the so-called freedoms..." (Tr. p. 5829). See also Tr. p. 6049, 6051. Frick accurately predicted the Nazi method of dealing with political opponents when he declared to an opposing member of the Reichstag in 1932, "Don't worry, when we are in power, we shall put all of you guys into concentration camps." (Affidavit of Gebhart H. Seger, L-83, USA-234).

113. English transcript, p. 6064.

114. English transcript, p. 6054.

115. English transcript, p. 5860.

116. Stenographic report of the meeting on The Jewish Question, under the Chairmanship of Fieldmarshal Goering, 12 November 1938, (1816-PS, USA-261, Tr. p. 1440).

117. Memorandum, 19 November 1938, concerning meeting of Reich Defense Council (3575-PS, USA-781, Tr. p. 6406, 6157). See also Tr. p. 5846. For similar reasons Goering preferred the destruction of Jews rather than of their property (1816-PS).

118. English transcript, p. 13706.

119. Other factors were not overlooked. One of the reasons for von Neurath's selection as Foreign Minister at the beginning of the Nazi regime was his excellent connections abroad. (Tr. p. 6024).

120. Hitler's speech to Commanders-in-Chief, 22 August 1939 (1014-PS, USA-30, Tr. p. 377).

121. Affidavit of Alfred Helmut Naujocks, 20 November 1945 (2751-PS, USA-482, Tr. p. 1907). Likewise, Jodl noted in his diary a few weeks before the planned invasion of Norway that the Fuehrer was still looking for an

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excuse for the operation (1809-PS, GB-88, Tr. p. 1088, 2403).

122. Case Green with wider implications, report of Intelligence Division, Luftwaffe General Staff, 25 August 1938. (375-PS, USA-84, Tr. p. 752).

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123 Minutes of conference, 23 May 1939, "Indoctrination on the political situation and future aims." (L-79, USA-27, Tr. pp. 359, 408, 930).

124 Goering has accepted responsibility for the Nurnberg Laws, which he signed (Tr.p. 5871), for the Austrian Anschluss (Tr.p. 5895), and for the use of prisoners of war in armament industries (Tr.p. 6219). Von Schirach had admitted responsibility for the training of the Hitler Youth: "It is my guilt that I educated the German youth for a man who committed murders million-fold. I believed in that man. That is all that I can say as an explanation for my attitude. But that guilt is my own, my personal guilt. I had the responsibility for the youth. I carried the authority of command; and so I alone carry the guilt for that youth." (Tr.p. 10295). Frank has admitted, "I feel a terrible guilt within me." (Tr.p. 8092).

125 Goering blamed persecution of the churches on Himmler and Bormann. Tr.p. 5856. Schirach blamed extermination of the Jews on Hitler and Himmler: "The murder was ordered by Adolf Hitler... he and Himmler together committed that crime, which of all times is the darkest spot in our history. It is a crime which is shameful to every German." (Tr.p. 10293).

126 Final argument of Dr. Stahmer, counsel for Goering. Tr.pp. 12973, et seq.

127 "The Nazi Plan", excerpt of script of a motion picture composed of captured German film. (3054-PS, USA-167, Tr.p. 1264).

128 Goering testified: "No, I did not want any war..." Tr.p. 6087. Ribbentrop testified: "The Fuehrer has -- and then I have upon his orders, and I believe I may be a good witness for it myself -- always tried to solve these problems in a diplomatic way." Tr.p.6826.

129 Goering testified: "to set aside Versailles, the State had to

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1 be strong, for a weak state was never listened to; that we know from experience." Tr.p. 6070.

130 Goering testified: "I told the Fuehrer that in spite of this principal point of view I oversaw a menace threatening from Russia; I still would ask him to rather let this menace continue to exist and, if it was at all possible, to try to direct the interests of Russia against England." Tr.p. 5957.

131 English transcript, p. 6048.

132 English transcript, pp. 5894-5, 6036, 6069.

133 English transcript, p. 5998.

134 Other defendants admitted that the wars were aggressive. Schacht testified: "Q. Well, we found something we agree on, Doctor. You knew of the invasion of Poland? A. Yes. Q. As an unqualified act of aggression on Hitler's part? A. Absolutely Q. And of Holland? A. Absolutely. Q. And of Denmark? A. Absolutely. Q. And of Norway? A. Absolutely. Q. And of Yugoslavia? A. Absolutely. Q. And of Russia? A. Absolutely, sir; and Norway and Belgium, which you left out." Tr.p. 8910.

135 Goering testified: "I urged him not at that moment or an even short time thereafter to start any war against Russia." Tr.p. 5956; see also Tr.p. 6056. Keitel testified that he wrote a memorandum to Hitler opposing the attack on Russia. He said: "But I did in that memorandum most certainly refer to the fact that the Non-aggression Pact existed." Tr.p. 7096.

136 English transcript, p. 12929.

137 OKW Directive for Unified Preparation for War 1937-1938, with covering letter from von Blomberg, 24 June 1937. (C-175, USA-69 Tr.p. 547). Yet it was in this period that Goering was trying out the strength of his Luftwaffe in the Spanish Civil War (Tr.p. 5871). Goering has admitted the non-defensive nature of the Luftwaffe (Tr.p.5896).

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138 Final argument of Dr. Stahmer, counsel for Goering. "Therefore, a conspiracy with a dictator at its head is a contradiction in itself. A dictator does not enter into a conspiracy with his followers, he does not make any agreement with them, he dictates." Tr.p. 12970.

139 English transcript, p. 12155.

140 English transcript, p. 12183.

141 English transcript, pp. 5854, 6036, 6056.

142 Extracts from Organization Book of the NSDAP, 1943 edition. (1893-PS, USA 323, Tr. p. 1578).

143 Criminal Code, 1871, Sec. 128 (never repealed).

144 Goering testified: "In the case of Schacht he was a very strong personality and whilst not wanting to over-emphasize my importance and disregarding whether we were friends or not, on the basis of the two positions we had to get into difficulties and one or the other had to cede finally." Tr.p. 6082.

145 "Q. Mr. Dahlerus, will you tell me whether I got all of your last answer to Dr. Stahmer correctly? Did you say that 'I then realized that it was on the 26th of September, that his, Goering's aim, had been to split Poland and grab and occupy Poland with the consent of Great Britain'? Is that right? A. Yes, it is corr but I should like to say it was the German Government's, including Goering's, aim." Tr.p. 6119. The Fuehrer informed Goering some time before the attack on Poland was launched that the task was to "eliminate British intervention." (TC-90, GB-64).

146 Hitler's speech to the Commanders-in-Vhief, 22 August 1939. (1014-PS, USA-30, Tr.p. 376).

147 Frank Diary. Tagebuch. 1 January 1944 to 28 February 1944. Entry of 14 January, 15 January, 8 February 1944. (2233-BB-PS, USA-295, Tr.p. 1501).

148 Note, 11 April 1943, and report of speech of Koch in Kieve on

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5 March 1943, concerning treatment of civilian population in Ukraine. (1130-PS, USA-169, Tr.p. 1269).

149 Frank testified: "Q. Did you ever participate in the destruction of Jews? A. I saw yes, and the reason why I say yes is because, being under the impression of these five months of this trial,and particularly under the impression of the statements made by the witness Hoess, I cannot allow it before my conscience that responsibility for all this should be handed over to these small people alone. I myself have never installed an extermination camp for Jews or demanded that they should be installed, but if Adolf Hitler personally has turned that dreadful responsibility over to these people of his, then it must be mine too. We have fought against Jewry; we have fought against it for years; and we have allowed ourselves to make utterances, and my own diary has become a witness against me in this connection -- utterances which are terrible. It is my duty -- my only duty -- therefore, to answer your question in this connection with Yes. A thousand years will pass and this guilt of Germany will still not be erased." (Tr.p. 8099).

150 Funk explained that he did not hold "the position of minister as one would generally think of it." (Tr. p. 9014).

151 Ribbentrop, Tr.p. 6857, 6823; Keitel, Tr.p. 7157; Funk, Tr.p. 9118; Goering, Tr.p. 6247.

152 English transcript, p. 8910, supra note 121.

153 English transcript, p. 8808, 8814-17, 8923-25.

154 "The fact was that Hitler tried to use this defeat for the self-destruction of the German people, as Speer has testified and confirmed, in a most terrible way, and as I could observe in the last phase of the conflict in Berlin when, under the pretense of a false hope, [illegible]-year-old, fourteen-year-old, and thirteen-year-old boys were equipped for war with hand firearms and called into battle, boys who perhaps might have been the hope for the period of reconstruction. Hitler fled into death, and

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he left the official report that he had died in battle. I learned that he had committed suicide, and my last public statement, on 2 May 1945, was the publication of the fact of this suicide, for I wanted to kill a Hitler legend in the bud." (Tr.p.12547). Dahlerus has recorded his impression of Hitler, before the war, as "a completely abnormal person." (Tr.p. 6125).

155 English transcript, p. 12080.

156. English transcript, p. 12117

157. Milch testified: "... later that I would try to speak to Hitler against war once more was rejected by the Reichsmarshal as absolutely hopeless." (Tr.p. 5576).

158. English transcript, p. 12118.

159 English transcript, p. 6881

160. Minutes of second session of Working Committee of the Reich Defense Council held on 26 April 1933. (EC-177, USA-390, Tr.pp. 1699, 1727).

161. Raeder testified: "That is the circumvention of the Versailles Treaty as far as that was necessary to improve our defenses, which I explained during the recent days here. It was a matter of honor for every man to do it." (Tr.p. 9919.)

162. Goering testified: "During a conversation which I had with Foreign Minister von Ribbentrop who was in London at that time, I stressed that the ultimatum had not been put by ourselves but by Seyss-Inquart. That was absolutely true. Legally, in fact, of course I put it, but that telephone conversation was heard on the English side and I had to conduct a diplomatic conversation, and I have never heard yet that diplomats in such cases say later how it was in fact, but they always stress how it was de jure, and why should I be an exception there?" (Tr.p.5891) But the transcript of the telphone conversation between Goering and Seyss-Inquart which led to the capitulation of Austria shows Goering saying: "Now, remember the following: You go immediately together with Lt. General Muff and tell the Federal President

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that if the conditions which are known to you are not accepted immediately, the troops who are already stationed in and advancing to the frontier will march in tonight along the whole line, and Austria will cease to exist." Transcript of telephone calls from Air ministry, 11-14 March 1938. (2949-PS, USA-76, Tr.p.566

163. German assurance to Czechoslovakia of 11 March 1938. (Tc-27, GB-21, Tr.p. 962.)

164 Speer's conference minutes of Central Planning Board, 1942-44, concerning labor supply. (R-124, USA-179, Tr.pp. 1286, 1293, 1309, 2989.)

165. English transcript, p. 5878.

166. English transcript, p. 6150

167. English transcript, p. 5900: see also Tr.p. 5998.

168. English transcript, p. 8527.

169. English transcript, pp. 8516-19

170. English transcript, p. 13276.

171. English transcript, p. 6857.

172. Examples of the application of this philosophy may be found in Goerings' explanation of his art looting: he had intended to put his pictures in a gallery which he intended to construct for the German people -- some day (Tr.p. 5934): his statement that he had always held that captured enemy airmen were to be treated as "comrades" (Tr.p. 5979); and his attempt to minimize his words advocating harsh treatment of the Jews, as the result of conversational excitement (Tr.p. 6192).

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken until 1400 hours.)

Saslaw

Afternoon Session

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(The hearing reconvened at 1345 hours, 26 July 1946)

THE PRESIDENT: I call on the Chief Prosecutor of the United Kingdom, Great Britain and Northern Ireland.

SIR HARTLEY SHAWCROSS: May it please the Tribunal; like my distinguished colleague whose succinct, able and eloquent speech I cannot hope to emulate, I desire on behalf of the British Prosecutors at this trial to lay before the Tribunal some comment. I am afraid it is of some length on those salient and outstanding features of the evidence which, in our submission, make clear the guilt of these defendants. Although throughout these proceedings the representatives of the prosecuting powers have worked in the closest cooperation and agreement and although there are certain matters which I shall be laying before the Tribunal on behalf of all of us, we all thought it right at this final stage, even at the cost of some inevitable repetition and overlapping, that we should prepare our final submissions quite independently so that the Tribunal and our own countries might know exactly the grounds on which we seek the condemnation of these men; and if it turns out that several of us point to the same evidence or reach similar conclusions, as no doubt it will, that very coincidence reached independently may perhaps add force to our submissions that each of these defendants is legally guilty.

That these Defendants participated in and are morally guilty of crimes so frightful that the imagination staggers and reels back at their very contemplation is not in doubt. Let the words of the Defendant Frank, which were repeated to you this morning, be well remembered: "thousands of years will pass and this guilt of Germany will not be erased." Total and totalitarian war, waged in defiance of solemn undertakings and in breach of Treaties; great cities, from Coventry to Stalingrad, reduced to rubble, the country side laid waste, and now the inevitable aftermath of war so fought -- hunger and disease stalking through the world: millions of people homeless, maimed, bereaved. And in their graves, crying out, not for vengeance but that this shall not happen again, ten million who might be living in peace and happiness at this hour, soldiers, sailors, airmen and civilians killed in battles that

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ought never to have been.

Nor was that the only or the greatest crime. In all our countries whe perhaps in the heat of passion or for other motives which impair restraint some individual is killed, the murder becomes a sensation, our compassion is aroused, nor do we rest until the criminal is punished and the rule of law is vindicated. Shall we do less when not one but on the lowers computation twelve million men, women and children, are done to death. Not in battle, not in passion, but in the cold, calculated, deliberate attempt to destroy nations and races, to disintegrate the traditions, the institutions a the very existence of free and ancient States. Twelve million murders. Two thirds of the Jews in Europe exterminated, more than six million of them on the killers' own figures. Murder conducted like some mass production industry in the gas chambers and the ovens of Auschwitz, Dachau, Treblinka, Buchenwald, Mauthausen, Maidanek and Oranienburg.

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And is the world to overlook the revival of slavery in Europe, slavery on a scale which involved 7,000,000 men, women and children taken from their homes, treated as beasts, starved, beaten and murdered?

It may be that the guilt of Germany will not be erased for the people of Germany share it in large measure, but it was these men who, with a handful of others, brought that guilt upon Germany and perverted the German people. "It is my guilt"- confessed the defendant Schirach - "that I educated the German youth for a man who committed murders a millionfold."

For such crimes these men might well have been proceeded against by summary executive action and had the treatment, which they had been parties to meting out against so many millions of innocent people been meted out to them they could hardly have complained. But this Tribunal is to adjudge their guilt not on any moral or ethical basis alone, but according to law. That natural justice which demands that these crimes should not go unpunished, at the same time insists that no individual should be punished unless patient and careful examination of the facts shows that he shared the guilt for what has been done. And so, during these many months, this Tribunal has been investigating the facts and has now to apply the law in order both that justice may be done to these individuals as to their countless victims, and also that the world may know that in the end the predominance of power will be driven out and law and justice shall govern the relations between States.

For the effects of this trial will reach out far beyond the punishment of a score or so of guilty men. Issues are at stake far greater than their fate, although upon their fate those issues, in some measure, depend. In the pages of history it will count for nothing whether this trial lasted for two months or for ten. But it will count for much that by just and patient examination the truth has been established about deeds so terrible that their mark may never be erased, and it will count for much that law and justice have been vindicated in the end.

Within the space of a year evidence far exceeding that previously presented to any Tribunal in history has been collected, sifted and placed before you. Almost all of that evidence consists of the captured records

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and documents of the Government to which these men belonged, and much of it directly implicates each one of them with knowledge of, and participation in one or other aspect of the crimes committed by the Nazi State. This evidence has not been refuted and it will remain for ever to confront those who may hereafter seek to excuse or mitigate that which has been done. Yet now that this mass of evidence has been presented to you, I shall invite you for a little to detach your minds from its detail to consider the cumulative effect and to review this overwhelming case as a whole. It is only by chance that their own captured papers have enabled us to establish these crimes out of the very mouths of the criminals. But the case against these men can be established on a broader basis than that, and must be looked at in the light of its historical background.

When one considers the nature and the immensity of the crimes committed, the responsibility of those who held the highest positions of influence and authority in the Nazi State, is manifest beyond doubt. For years, in a world where war had itself been declared a crime, the German State was organized for war; in a world where we proclaim the equality of men, for years the Jews were boycotted, deprived of their elementary rights of property, liberty, life itself; for years honest citizens lived in fear of denunciation and arrest by one or other of the organizations, criminal as we allege them to be, through which these men ruled Germany; for years throughout the German Reich millions of foreign slaves worked in farm and factory, were moved like cattle on every road, on every railway line.

These men, with Hitler, Himmler, Goebbels and a few other confederates were at once the leaders and the drivers of the German people; it was when they held the highest positions of authority and of influence that these crimes were planned and perpetrated. If these men are not responsible, who are? If minions who did no more than obey their orders, Dostler, Eck, Kramer and a hundred others have already paid the supreme penalty, are these men less responsible? How can it be said that they and the offices of State which they directed took no part? Lammers, their own witness, Head of the Reich Chancellory, said in 1938:

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"Despite the total basic concentration of power of authority in the person of the Fuhrer, no excessively strong and unnecessary centralization of administration in the hands of the Fuhrer results in the governmental administration..... directoed downwards, forbids interference with every individual order he may issue. This principle is manipulated by the Fuhrer in his governmental leadership in such a way that, for example, the position of Reich Ministers is actually much more indenepdent today than formerly, even though today the Reich Ministers are subordinated to the Fuhrer's unlimited power of command. Willingness to bear responsibility, ability to make decisions, aggressive energy and real authority - these are the qualities which the Fuhrer demands primarily of his subordinate leaders. Therefore he allows them the greatest freedom in the execution of their affairs and in the manner in which they fulfill their tasks".

Let them now, accused murderes as they are, attempt to belittle the power and influence they exercised how they will, we have only to recall their ranting, as they strutted across the stage of Europe dressed in their brief authority, to see the part they played. They did not then tell the German people or the world that they were merely the ignorant, powerless puppets of their Fuhrer. The Defendant Speer has said:

"Even in a totalitarian system there must be total responsibility,....it is impossible after the catastrophe to evade this total responsibility. If the war had been won, the leaders would also have assumed total responsibility".

Had the war been won is it to be supposed that these men would have retired to the obscurity and comparative innocence of private citizenship?

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That opportunity was denied to them before the war had they wished to disassociate themselves from what was taking place. They chose a different path. From small beginning, at a time when resistance instead of participation could have destroyed thist thing, they fostered the Hitler legend, they heloed to build up the Nazi Power and ideology and to direct its acticities until, like some foul octopus, it spread its slime over Europe and extended its tentacles throughout the world. Were these men ignorant of the ends sought to be achieved during that period of the rise to power? Paul Schmidt, Hitler's interpreter, a witness of great knowledge, has testified:

> "The general objectives of the Nazi leadership were apparent from the start - namely, the domination of the European continent to be achieved first by the incorporation of all German speaking groups in the Reich, and secondly, by territorial expansion under the slogan of 'Lebensraum'".

That slogan "Lebensraum" - that entirely false idea that the very existence of the German people depended upon territorial expansion under the Nazi flag - was from the earliest days an openly avowed part of the Nazi doctrine - yet any thinking person must have known that it would lead inevitabley to war.

It was the justification Hitler offered to his fellow conspirators at those secret meetings on the 5th November 1937, 23rd May and 23rd November 1939, at which the fate of so may countries was sealed.

Although less concrete it was no less false than the demand for a revision of the Treaty of Versailles. The so-called injustice of Versailles so cunningly exploited to provide a popular rallying point under the Nazi banner, had succeeded in uniting behind the Nazis many Germans who would not otherwise have supported some of the rest of the Nazi program.

And the effect of that propaganda can be judged from the repeated efforts here made by the Defense to develop the alleged injustice of the Treat. Unjust or not, it was a Treaty and no Government content to live

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at peace need have complained of its provisions. Even if the complaints were justified, there was comparatively soon no ground left for them. They provisions of the Treaty could have been - in some respects they were - revised by peaceful negotiations. By 1935, four years before the world was plunged into war, these men had publicly renounced the Treaty, and by 1939 not only were they free of nearly all the restrictions of which they had complained, but they had seized territory which had never belonged to Germany in the whole of European history. The cry of Versailles was a device for rallying men to wicked and aggressive purposes. But it was a device less diabolical than the cry of anti-Semitism and racial purity, by which these men sought both to rally in their own country and to sow discord and antagonism amongst the people of foreign lands. Rauschning reports Hitler's statement:

> "Anti-Semitism is a useful revolutionary expedient. Anti-Semitic propaganda in all countries is an almost indispensable medium in the extansion of our political campaign. You will see how little time we shall need in order to upset the ideas and criteria of the whole world simply and solely by attacking Judaism. It is beyond question the most important weapon in my propaganda arsenal".

And as a result of this wicked propaganda, I would remind you of the words of Bach Zelewski who, when he was asked how Ohlendrof could admit that the men under his command had murdered 90,000 people, replied:

> "I am of the opinion that when, for years, for decades, the doctrine is preached that the Slav race is an inferior race and Jews not even human, then such outcome is inevitable."

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And so, from the earliest day, the aims of the Nazi movement were clear: and beyond dount: expansion, European domination, elimination of the Jews; ultimate aggression, ruthless disregard of the rights of any people but themselves.

Such were the beginnings. I shall not pause to trace the Nazi Party's growth to power; how, as the writer of the History of the SA has said they found that

"Possesion of the streets is the key to power in the State."

or how, by the organized terror which the witjess Severing has described the storm troops of Brownshirts terrified the people whilst the Nazi propaganda, headed by "Der Sturmer", vilified all opponents and incited people against the Jews.

I shall not examine that period, grave as are the lessons which democratic peoples ought to learn from it, for it may not be easy to say exactly at what date each of these Defendants must have realized, if, indeed, he had not know and gloried in it all from the beginning - that Hitler's apparently hysterical outpourings in Mein Kampf were intended in all seriousness and that they formed the very basis of the German plan. Some, no doubt, such as Goering, Hess, Ribbentrop, Rosenberg, Streicher, Frick, Frank, Schacht, Schirach and Fritzsche realized it, very early. In the case of one or two, such as Doenitz and Speer, it may have been comparatively late. Few can have been ignorant after 1933: all must have been active participants by 1937. When one remembers the apprehension caused abroad during that period there can be no doubt, in our submission, that these men, almost all of whom were the rulers of Germany from 1933 onwards, Hitler's intimate associates, admitted to his secret meetings, with full knowledge of plans and events not only acquiesced in what was taking place, but were active and willing participants.

May I thn, examine in a little more detail, the period of the "Build up" - the position of domestic government in Germany between 1933 and 1939; because what happened then makes clear the criminal involvment of these men in what was done later. What I say now has

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some special reference to the first Count in the Indictment, for it is against this general backgrond that must be considered the allegation that these men were common conspirators to commit the crimes (such as crimes against peace, and the crime against humanity), which are more specifically charged in the later Counts.

Totalitarian Government brooks no opposition. Any means justifies the end and the immediate end was ruthlessly to gain complete control of the German State and to brutalize and train its people for war. What stood in the way in January 1933? Firstly, the members of the other political parties; secondly the democratic system of election and of public assembly, the organization of trade unions; thirdly the moral standards of the German people, and the Churches which fostered them.

Accordingly, the Nazis set out, quite deliberately, to eliminate this opposition: the first, by imprisoning or terrorizing their opponents; the second, by declaring illegal all elements of tolerance and liberalism, outlawing trade unions and opposition parties, reducing tje de,ocratic assembly to a farce and controlling elections: the third, by systematic discouragement and persecution of religion, by replacing the ethics of Christianity with the idolatry of the Fuhrer and the cult of the blood and by rigidly controlling education and youth. Youth was systematically prepared for war and taught to hate and persecute the Jews; the plans for aggression required a nation trained in brutality and taught that it w s both necessary and heroic to invade the peoples of other countries.

It is a measure of the wickedness and effectiveness of this domestic policy that, after six years of rule, the Nazis found little difficulty in leading a perverted nation into the greatest criminal enterprize in history. It is perhaps, worth considering from the evidence, a few examples of how this policy developed during these six years. They are examples of what was happening in every German town and village: it must be remembered here, that in the need to avoid cumulative evidence you have, in the result, been deprived of its cumulative effect.

First then, the elimination of political opponents. Within six weeks

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of the Nazis coming to power in January 1933, the German newspapers were quoting official sources for the statement that 18,000 Communists had been imprisoned whilst the 10,000 prisoners in the gaols of Prussia included many Socialists and intellectuals. The fate of many of these men was described by Severing, who estimated that at leastl,500 Social Democrats and a similar number of Communists were murdered in the concentration camps recently established by Goering as Chief of the Gestapo.

These camps, controlled by the Party organizations, were deliberately so run as to strike terror throughout the country. In the words of the witness Severing, the concentration camps represented for the people "the incarnation of all the terrible".

Goering has said:

> "We found it necessary that we should permit no opposition to us"

and he admitted that there were arrested and taken into protective custody people who had commited no crime.

It might have been well, if at that time, they had read the maxim of which they spoke yesterday, nulla poena sine lege.

Goering added:

> "if everyone knows that if he acts against the state he will end up in a concentration camp.....that is to our advantage".

The camps were at first run indiscriminately by the SA and the SS and according to Goering were created

> "as an instrument which at all times was the inner political instrument of power."

Gisevius, who at that time had recently joined the Gestapo, you remember, gave the following description:

> "I was hardly more that two days in that new police office when I had discovered already that incredible conditions existed there. There was not police which interfered against crimes, against murder, against arrests, against burglary. There

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was a police organization which protected just those who committed such crimes. Those arrested were not those who were guilty of such crimes, they arrested those who sent their cries for help to the police. It was not a police which interfered for protection, but a police whose task, it seemed, was, in fact, to hide, to cover up and to sponsor crimes; those commandos of the SA and SS who played police, were encouraged by that so-called Secret State Police and all possible aid was given to them.....

"Special concentration camps for the Gestapo were installed, and their names will remain for a terrible shame in history. They were Oranienburg and the private prison of the Gestapo, in the Papenstrasse, the Columbia House, or, as it was called cynically, the "Columbia Diele".....I asked one of my coleagues, who was also a professional civil servant....'Tell me, please; am I here in a police office or in a robber's cave?' The answer that I received was: 'You are in a burgler's cave and you can expect that you will see much more yet'".

Gisevius went on to describe Goering's order to murder the National Socialist Strasser and how he gave "blank authority" for murder to the political police, by signing a form granting amnesty to the policeman, leaving a blank space for the name of the murdered person in respect of whom the amnesty had been granted.

If confirmation of the evidence of these defense witnesses were required, it is to be found in the seriod of reports dated May and June 1933, from the Munich Public Prosecutor to the Minister of Justice which

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are in evidence recording a successi n of murders by SS officials in the concentration camp at Dachau.

In 1935, the Reich Minister of Justice in writing to Frick his protesting against numerous instances of ill treatment in concentration camps including

> "Beating as a disciplinary punishment.....
> "ill-treatment mostly of political internees
> in order to make them talk"..... and
> "ill-treatment of internees arising out of
> sheer fun or sadistic motives".

went on to compain that

> "the beating of the Communists held in
> custody is regarded as an indispensable
> police measure for a more effective sup-
> pression of Communist activities".

And after citing instances of torture, he concludes:

> "These few examples show a degree of
> cruelty which is an insult to every
> German sensibility".

Frick's sensibility was apparently not so tender - the very next year he received a similar protest from one of his own subordinates and shortly afterwards he issued a decree making all police forces subordinate to Himmler, the very man whom he knew to be responsible for these atrocities.

These brutalities, well known to Ministers, as we suggest they were, were not confined to the privacy of concentration camps. It is perhaps worth quoting one instance from the thousands who suffered from the policy which was being persued.

The Tribunal will remember the account by Sollman, a Social Democrat, and member of the Reichstaf from 1919 to 1933. He spoke of the incident on March 9th of 1933 when, to quote his own words:

> Members of the SS and SA came to my home
> in Cologne and destroyed the furniture and
> my personal records. At that time I was

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taken to the Brown House in Cologne, where I was tortured, being beaten and kicked for several hours. I was then taken to the regular Government Prison in Cologne where I was treated by two medical doctors and released the next day. On March 11th 1933 I left Germany".

The second object, the suppression of all democratic institutions, was comparatively simple. The necessary laws were passed to outlaw trade unions: the Reichstaf became a farce directly the opposition parties had been dissolved and their members had been put in concentration camps. The witness Severing has spoken of the treatment of the Reichstag members. In 1932, on von Papen's order he, who was chief of the Prussian Ministry of the Interior, was forcibly removed from his office. It was not long after the 30th of January 1933, that the Communist and Social Democratic parties were decreed illegal and all form of public expression, other than by the Nazis, was prevented. This action resulted from deliberate planning. Frick had said as long before as 1927:

"The National Socialists longed for the day when they could put an inglorious but well deserved end to this infernal sham of a Parliament and open the way for a racial dictatorship".

At this time when democratic Government is seeking to reestablish itself throughout the world, the Nazi attitude to elections is not to be forgotten. Free elections could not, of course, be permitted. Goering had told Schacht in February 1933 when seeking money for the Party from industry and I quote:

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> "The sacrifices asked for will surely be so much easier for industry to bear if it is realised that the election of March 5th will be the last one for the next ten years, probably for the next 100 years."

In these circumstances it is not surprising to find that thereafter, as the evidence such as the SD report on the conduct of the plebiscite at Kappel makes clear, the occasional votes of the people, always announced as triumphs for the Nazis, were conducted dishonestly.

I turn to the third class of opposition, the Churches:- Bormann's memorandum sent in December 1941 to all Gauleiters and distributed to the SS sums up the Nazi attitude to Christianity:

> "National Socialist and Christian concepts are irreconcilable..... If therefore in the future our youth knows nothing more of this Christianity whose doctrines are far below ours, Christianity will disappear by itself..... All influences which might impair or damage the leadership of the people exercised by the Fuehrer with the aid of NSDAP must be eliminated. More and more the people must be separated from the churches and their organs, the pastors."

The persecution of the churches makes a melancholy story. From the abundance of evidence which has been submitted to the Tribunal it is perhaps permissible to quote from a complaint to Frick made early in 1936:-

> "Lately half the political police reports concern clerical matters. We have untold petitions from all kinds of cardinals, bishops and dignitaries of the Church. Most of these complaints concern matters until the jurisdiction of the Reich Ministry of the Interior, although the respective rules were not decreed by it....."

And then after referring to the chaos resulting from the division of authority between the various police forces, the report goes on to refer to the results of the religious struggle:

> "Instances of gross disturbances of congregations are mounting terribly fast lately, often necessitating the intervention of the emergency squad..... After discarding the rubber truncheon, the idea of exposing executive officials to situations in which, during gross interruption of meetings, they may be forced to use cold steel, is unbearable."

The diary of the Minister of Justice for 1935 provides ample instances of the sort of behaviour which was being encouraged by the Hitler Youth under the defendant Schirach and the defendant Rosenberg. The Hitler Jugend, whose membership increased from just under 108,000 in 1932 to nearly 8,000,000 in 193 was organised on a military basis. The close collaboration between Keitel and Schirach in their military education has been described; the special arrangeme

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between Schirach and Himmler by which the Hitler Jugend became the recruiting organisation for the SSis in evidence. You will not have forgotten the words of Schirach's deputy:

> "In the course of years we want to ensure that a gun feels just as natural in the hands of a German boy as a pen."

What a horrible doctrine.

The terrorisation, murder and persecution of political opponents, the dissolution of all organisations affording opportunity for opposition, criticism or even free speech, the systematic perversion of youth and training for war would not, however, have sufficed without persecution of the Jews. Let no one be misled by the metaphysical explanations which are put forward for this most frightful crime. What Hitler himself in this very town described as the fanaticalcombat against the Jews was part and parcel of the policy of the policy of establishing Ein Herrenvolk, which would dominate Europe and the world, and so persecution of the Jews was popularized throughout the regime. It gave the youths a butt to bully and so to acquire practical schooling in brutality.

With the accession to power the persecution of the Jews increased in violence. The final solution of mass murder had then been conceived. In Mein Kampf of Hitler, the Bible of the Nazis, Hitler had regretted that poison gas had not been employed to exterminate the German Jews during the last war, and as early as1925 Streicher said,

> "Let us make a newbeginning to-day, so that we can annihilate the Jew."

It may be that he, even before Hitler, Himmler or the others, had visualised the annihilation of the Jews, but the Nazis were not at first ready completely to defy world opinion and they confined themselves to persecution and to making life in Germany unbearable for Jews. To the never ceasing accompaniment of the Sturmer and the official Nazi Press the campaign of Jew baiting was fostered and encouraged. Rosenberg, von Schirach, Goering, Hess, Funk, Bormann, Frick joined hands with Streicher and Goebbels. The boycott in April 1933 celebrated the Nazi accession to power and provided only a taste of what was to follow. It was accompanied by demonstrations and window smashing -- action "mirror" as it has been referred to in this Court. Accounts

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of typical incidents are given in the affidavit of the witness Geist who describes the events in Berlin on March 6th, 1933:

> "Wholesale attacks on the Communists, Jews and those who were suspected of being either, mobs of SA men roamed the streets, beating up, looting and even killing persons."

In 1935 followed the infamous Nuremberg Decrees. In 1938 the so-called spontaneous demonstrations ordered throughout Germany resulted in the burning of the synagogues, the throwing of 20,000 Jews into concentration camps with the accompaniment of penalties, of aryanization of property, and the wearing of a yellow star.

The cynicism of these men and the merciless character of their policy towards the Jews appeared at Goering's meeting of 12th November 1938, when they vied with each other in suggesting methods of degrading and persecuting their helpless victims. Neither Hitler nor Himmler, whom to-day they seek to blame, was present, but who, reading record of that meeting, can doubt the end in store for the Jews of Europe? At that meeting Heydrich reported on the events of the 12th November: 101 synagogues destroyed by fire, 76 demolished and 7,500 stores ruined throughout the Reich. The approximate cost of replacing broken glass alone was estimated at RM 6,000,000 and the damage to one store alone in Berlin at RM ,1700,000. Heydrich also reported 800 cases of looting, the killing of 35 Jews and estimated the total damage of property, furniture and goods at several hundred million Reichsmarks.

You will recall Heydrich's order for the riot, including the arrests of the Jews and their removal to concentration camps. After referring to the fact that demonstrations were to be expected in view of the killing of a German Legation official in Paris that night, he instructs the Police on the prospective burning of synagogues, destruction of business and private apartments of Jews, and in their duty to refrain from hindering the demonstrators.

> "The Police has only to supervise compliance with the instructions."

And finally:

> "In all districts as many Jews, especially rich ones, are to be arrested as can be accommodated in the existing prisons. For the time being only healthy men, not too old, are to be arrested. Upon their arrest, the appropriate concentration camps should be contacted immediately in order to confine them in those camps as fast as possible."

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We now know from the evidence with regard to the seizure of the houses of Jews by Neurath and Rosenberg why the orders were to concentrate upon the richest.

These events were neither secret nor hidden. Ministers were writing to each other and discussing them. Long before 1939 they were common knowledge not only to Germany but to the whole world. Every one of these defendants must have heard again and again stories similar to that of Sollman. Almost all of them have sought to gain credit from helping one or two Jews; and you will remember the evidence of a special office in Goering's Ministry to deal with protests, and his witness Koerner who stated with pride that Goering had always intervened on behalf of individuals. Perhaps it afforded them some gratification or eased their conscience in some way occasionally to demonstrate their influence by exempting some unhappy individual who sought their favour from the general horror of the regime which they continued to uphold. But these men participated in a Government which was conducted without any regard for human decency or established law. There is not one of them who, being a member of the Government during that period, has not got the blood of hundreds of his own countrymen on his hands.

Goering and Frick established the concentration camps; the witness Severing and the documents quoted testify to the murders which took place in them at a time when these two were directly responsible. Even Goering could not defend all the murders of the 30th June, 1934. He shares with Hess and Frick the responsibility for the Nuremberg Laws. The record of the meeting of the 12th November 1938 and Goering's initials on Heydrich's order of the 9th November require no comment.

As Ambassador in England, Ribbentrop must have been well aware of the facts, if only from the English papers, whilst his delegate Woermann assented to the atrocities reported to the meeting of the 12th November 1938. The previous owner of his country house, Herr von Reniz was placed in a concentration camp, and he expressed his sentiments towards the Jews to M. Donnot, on the 8th December 1938 in the following terms:

> "The German Government had therefore decided to assimilate them (the Jews) with the criminal elements of the population. The property which they had acquired illegally would be

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taken from them. They would be forced to live in districts frequented by the criminal classes."

Hoss, who set up an office for racial policy in 1933, shares responsibility for the Nuremberg decrees.

At the meeting of 12th November a full report was given of similar measures against the Jews in Austria and it seems certain that the defendant Kaltenbrunner as a faithful member of the Party was giving fullsupport to the necessary measures.

The evidence that Seyss-Inquart was playing his part is before the Tribunal. Rosenberg was writing "The Myth of the Twentieth Century" and taking his full share in the struggle against the Church and the Anti-Semitic policy of the Government: whilst even Raeder on Heroes' day 1939 was speaking of "the clear and inspiring summons to fight Bolshevism and International Jewry whose race-destroying activities we have sufficiently experienced on own people".

Frick, as Minister of the Interior, bears a responsibility second to none for the horrors of the concentration camps and for the Gestapo, whilst Frank, as Minister of Justice for Bavaria, was presumably receiving the reports on the murders in Dachau. He was the leading jurist of the Party, a member of the Central Committee which carried out the boycott of the Jews in March 1933 and spoke on the wireless in March 1934 justifying racial legislation and the elimination of hostile political organizations. He also was present at Goering's meeting.

The Tribunal will not require to be reminded of the part played by Streicher. It was in March 1938 that the Sturmer began consistently to advocate extermination, the first article of a series which was to continue throughout the next seven years, beginning with an article signed by Streicher ending with the words: "We are approaching wonderful times -- a Greater Germany without Jews".

Funk, as Vice President of the Reich Chamber for Culture from 1933 had participated in the policy for the elimination of the Jews; he was present and assented to the recommendations at Goering's meeting in 1938 at which it will be remembered Goering suggested that it would havebeen better to kill 200 Jews, whereupon Haydrich mentioned that in fact the number was a mere 35.

Schacht himself admitted that as early as the second half of 1934 and the first half of 1935 he found that he was wrong in thinking that Hitler would bring the "Revolutionary" force of the Nazis into a regulated atmosphere, and that he discovered that Hitler having done nothing to stop the excesses of individual Party members or Party groups, was pursuing a "policy of terror". Nevertheless he remained in office and Schacht accepted the

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the Golden Party Badge in January 1937 when von Elz refused it.

Schirach has confirmed his part in ensuring that the younger generation of Germany grew up rabid anti-Semites under his teaching. He cannot escape responsibility for training the youth to bully Jews: to persecute the Church; to prepare for war. This perversion of children is perhaps the basest crime of all.

Sauckel, who had joined the Party in 1921, filled the post of Gauleiter of Thuringia. He cannot have been ignorant of the persecution of the Church; of the Trades Unions, of other political parties and of the Jews, throughout this important Gau, and there is every reason to suppose that he gave the fullest support to those policies and thus enhanced his reputation with the Nazis. Papen and Neurath were in a better position to judge these matters than any of the other defendants, since it was their political associates who were being persecuted, whilst, in the case of Papen, some of his own staff were killed and he himself arrested, he was lucky to escape with his life.

Neurath's attitude to the Jews is shown by his speech in September 1933:

> "The stupid talk about purely internal affairs, as for example the Jewish question, will quickly be silenced if one realises that the necessary cleaning up of public life must temporarily entail individual cases of personal hardship but that nevertheless it only served to establish all the more firmly the authority of justice and law in Germany."

What prostitution of these great words!

Of the remainder, all were men of intelligence and already held positions of considerable authority. None of them can have been ignorant of what the whole world knew, yet not one of them has suggested that he made any effective protest against this regime of brutality and terror. All of these men continued in their spheres of government and in the highest positions of responsibility. Each in his part -- and each a vital part -- these men built up the evil thing, the ultimate purpose of which was so well known to them, and instilled the evil doctrines which were essential to the

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achievement of that purpose. It was Lord Acton -- that great European -- who, 80 years ago, in expressing his conviction of the sanctity of human life, said:

"The greatest crime is homicide. The accomplice is no better than the Assassin: the theorist is the worst."

I shall return if I may, later to the question of conspiracy and to the part these men played in it, but no conclusion upon the conspiracy charge in the first count of this Indictment is really possible until the specific crimes set out in the subsequent counts have been considered. And first of these is the crime against Peace, set out in Count 2. I say first, first in its place in the Indictment. Moralists may argue which is greatest in moral guilt. But this perhaps should be said at the very outset. It is said that there is no such crime as a crime against peace, and those superficial thinkers who, whether in this Court or in armchairs elsewhere, have questioned the validity of these proceedings, have made much of this argument. Of its merits I shall say something presently. But let it be said plainly now, that these defendants are charged also as common murderers. That charge alone merits the imposition of the supreme penalty and the joinder of this crime against peace in the Indictment can add nothing to the penalty which may be imposed on these individuals. Is it, then, a mere work of supererogation to have included this matter in the indictment at all? We think not, for the very reason that more is at stake here than the fate of these individuals. It is the crime of war which is at once the object and the parent of the other crimes; the crimes against humanity, the war crimes, the common murders. These things occur when men embark on total war as an instrument of policy for aggressive ends.

Moreover, taking this crime, the crime against peace, in isolation, it was responsible for the deaths in battle of ten million men, and for bringing to the very edge of ruin the whole moral and material structure of our civilization. Although it may be that it may add nothing to the penalty which may be imposed upon these men, it is a fundamental part of these proceedings to establish for all time that International Law has the power, inherent in its

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very nature, both to declare that a war is criminal, and to deal with those who aid and abet their States in its commission. I shall come back to the Law: let me first refer to the facts.

You have had from defense counsel an elaborate, but a partial and a highly controversial account of foreign relations leading up to 1939. I do not propose to follow them in that examination, nor am I concerned to say that as events have turned out, the policies pursued by the democratic powers may not sometimes have been weak, vacillating, and open to criticism. Defense counsel have sought to base some argument on the protocol attached to the German-Soviet Pact. They argue that it was wrong. I am not concerned with that, and of course I do not concede it. But let them argue that it was wrong. Do two wrongs make a right? Not in that international law which this Tribunal will administer.

The review which defense counsel have made entirely overlooks the two basic facts in this case, that from the time of "Mein Kampf" on, the whole aim of Nazi policy was expansion, aggression, domination, and that the democratic powers had to deal with a Germany which that was, in spite of occasional lip service to peace, the fundamental aim. If peace was contemplated at all, it was peace only at Germany's price. And knowing that that price would not be and could not be paid voluntarily, the Germans were determined to secure it by force.

Whilst the German people were being psychologically prepared for war, the necessary measures of re-armament were taken simultaneously. At his conference on the 23rd November 1939, Hitler summed up this period of preparation in these words:

> "I had to reorganize everything beginning with the mass of the people extending it to the Armed Forces. First internal reorganization, eradication of appearances of decay and of defeatist ides, education to heroism. While reorganizing internally, I undertook the second task to release Germany from its international ties.,. secession from the League of Nations and denunciation of the Disarmament Conference.... After that the order

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for rearmament. In 1935 the introduction of compulsory armed service. After that militarisation of the Rhineland."

The conspirators set out first to get rid of the political restraints which prevented rearmament. In October 1935 Germany left the League of Nations and in March 1935 recounced the Armament Clauses of Versailles and informed the world of theestablishment of an air force, of a large standing army, and of conscription. Already the Reich Defence Council had been set up and its Working Committee had had its second meeting as early as 26th April 1933 with representatives from every department. It is difficult, is it not, to believe that reading the minutes of these meetings, as they

must have done, Neurath, Frick, Schacht, Goering, Raeder, Keitel and Jodl, the last two being generally present, can have supposed that the regime did not intend war.

On the economic side Schacht, already President of the Reichsbank and Minister of Economics, was made General Plenipotentiary for War Economy in May 1935. The appointment was to be a complete secret. His contribution is best expressed in his own words:-

> "It is possible that no bank of issue in peacetime carried on such a daring credit policy as the Reichsbank since the seizure of power by National Socialism. With the aid of this credit policy, however, Germany created an armament second to none and this armament in turn made possible the results of our policy."

Schacht's speech on 29th November 1938 is seen to be no boast when the report of his deputy, which has been put in evidence, is considered.

That report shows that under Schacht's guidance, 180,000 industrial plants had been surveyed as to usefulness for war purposes. Economic plans for the production of 200 basic materials had been worked out. A system for the letting of war contracts had been revised, allocations of coal, motor fuel and power had been determined, RM. 248,000,000 had been spent on storage facilities alone, evacuation plans for skilled workers and war materials and military zones had been worked out; 80,000,000 wartime ration cards had already been printed and distributed to local areas and a card index on the skill of some 20,000,000 workers had been prepared.

The most detailed and thorough preparations which that report sets out were not made without the knowledge of every member of the government and no more graphic illustration of the common purpose and awareness of the aim which permeated all departments of the State is to be found than the second meeting of the Reich Defense Council itself held on 25th June 1939, under the presidency of the defendant Goering, the head of the 4-year plan. The defendants Frick, Funk, Keitel and Raeder were present and Hess and Ribbentrop were represented. The

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methodical detail in the plans which were being worked out; the preparations in respect of manpower involving the use of concentration camp workers and the unfortunate slaves of the protectorate are eloquent testimonies of the size of the struggle upon which these men knew that Germany was about to embark.

The major share in rearmament must be attributed to the defendants Goering, Schacht, Raeder, Keitel and Jodl, but the others, too, each in his sphere, played their parts: Rosenberg, Schirach and Streicher in education, Doenitz in the preparation of the U-boat fleet, Neurath and Ribbentrop in the field of foreign affairs.

Funk and Fritzsche were reorganizing propaganda and news systems until the former succeeded Schacht and became Minister of Economics and in September 1938 General Plenipotentiary for Economics. As Plenipotentiary Funk was charged with ensuring the economic conditions for the production of the armament industry, according to the requirements of the High Command. Frick as Plenipotentiary for the Reich administration, with Funk and Keitel, formed the three-man college planning preparations and decrees in case of war.

It is unnecessary in assessing this work of rearmament to do more by way of summary than to quote the words of Hitler himself in the memorandum which Jodl described as written during two nights of work by the Fuehrer personally and which he sent to the defendants Raeder, Goering and Keitel. In that memorandum of 9th October 1939, Hitler finally disposes of the evidence of these defendants that Germany was never adequately prepared for war.

> "The military application of our peoples strength has been carried through to such an extent that within a short time at any rate it cannot be markedly improved upon by any manner of effort."

and again:

> "The warlike equipment of the German people is at present larger in quantity and better in quality for a great number of German divisions, than in the year 1914. The weapons themselves, taking a substantial cross section, are more modern than is the case with any other country in the world

> at this time. They have just proved their supreme war-worthiness in a victorious campaign. In the case of the armaments of other countries this has yet to be demonstrated. In some arms Germany today possesses clear indisputable superiority of weapons."

And then, speaking of the ammunition available after the conclusion of the Polish campaign:

> "There is no evidence available to show that any country in the world disposes of a better total ammunition stock than the German Reich..... The Air Force at present is numerically the strongest in the world.... The AA artillery is not equalled by any country in the world."

That, then, was the practical result of six years of intensive rearmament carried out at the expense and with the knowledge of the whole of the German people.

Meanwhile the Youth of Germany was educated and drilled in semi-military formations for war and then, on reaching the age for conscription, was called up for intensive training. This was going on throughout the Reich, together with the enormous work of economic preparation. Is it to be believed that any one of these men did not guess -- did not, indeed, know -- the purpose of this terrific effort?

If, indeed, any of them was in doubt, the successful actions in which, to use the words of one of Neurath's witnesses, "the Nazis were able to reap cheap laurels without war through the successfully practised tactics of bluff and sudden surprise," must have opened their eyes.

The first step was the Rhineland and the technique became the model for each subsequent move. On 21st May, 1935, Hitler gave a solemn assurance that the stipulations of Versailles and Locarno were being observed. Yet three weeks earlier on the very day of the conclusion of the Franco-Soviet pact, later to become the official excuse for the re-occupation of the Rhineland, and the defense for it, before this Tribunal, the first directive had been issued to the Service Chiefs. The defendant Jodl having perhaps noted the significance of the date, has sought to persuade the Tribunal that his first admission that "Operation Schulung" referred to the reoccupation of

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the Rhineland was wrong, and that it applied to some military excursion in the Tyrol. Yet on 26th June, he himself was addressing the Working Committee of the Reich Defense Council on the plans for reoccupation and revealing that weapons, equipment insignia and field grey uniforms were being stored in the zone under conditions of the greatest secrecy. Can anyone who reads his words doubt that this process had been going on at least for seven weeks?

Any representative of the innumerable departments who attended that meeting and heard Jodl's remarks on the 26th June 1935 or who subsequently read the minutes, knew what to expect. On 2nd March the final orders were given and passed to the Navy four days later. The defendants Keitel, Jodl, Raeder, Frick, Schacht and Goering were all involved in the necessary executive action and, if his

U-Boats complied with the instruction of the 6th March, the defendant Doenitz, as well.

From the beginning, at every stage you see the common plan worked out - and worked out as itcould only be if those men each played his allotted part. First the period of apparent quiet, during which treaties are concluded, assurances given and protestations of friendship made while beneath the surface the Auslands organization under Hess and Rosenberg begins to undermine and disrupt. The victim is deceived by open promises and weakened by underhand methods. Next, the decision to attack is taken and military preparations are hastened. If the victim shows signs of suspicion, the assurances of friendship are redoubled.

Meanwhile, the finishing touches are put to the work accomplished by the Fifth Column. Then when all is prepared, what Hitler called "the propagandist cause for starting the war" is chosen, frontier incidents are faked, abuse and threats take place of fair words and everything is done to terrify the victim into submission. Finally, the blow is struck without warning.

The plan varies in detail from case to case, but essentially, it is the same, the perfect example repeated again and again, of treachery, intimidation and murder.

The next step was Austria. First, the Nazis arranged the murder of Dollfuss in 1934. After the evidence in the case of the defendant Neurath, there can be little doubt as to his assassination being plotted in Berlin and arranged by Habicht and Hitler some six weeks before. The failure of that putch made it necessary to temporize, and accordingly in May 1935 Hitler gave a complete assurance to Austria. At the same time the defendant Papen was sent to undermine the Austrian government. With the occupation of the Rhineland Austria, was next on theprogramme but Hitler was still not yet ready, hence the solemn agreement of July 1936. By the autumn of 1937 Papen's reports showed progress and accordingly the plot was divulged at the Hosbach meeting. A slight delay was necessary for the removal of the refractory Army leaders, but in February, 1938, Papen having completed his plotting with Seyss-Inquart, Schuschnigg was lured to Berchtesgaden and bullied by Hitler, Ribbentrop and Keitel. Shortly afterwards, the final scene

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took place, Goering playing his part in Berlin. The defendants, Goering, Hess, Keitel, Jodl, Raeder, Frick, Schacht, Papen and Neurathwere all aware of this Austrian plot, Neurath and Papen from the very beginning of it.

With the exception of Goering, each one of them has attempted to put forward a defense of ignorance which cannot be regarded as other than ludicrous in the light of the documents. Not one of them has suggested that he protested, each one of them remained in office thereafter.

Already the plan for Czechoslovakia was ready; it had been discussed at the Hoszbach meeting in November 1937; within three weeks of the Munich agreement the directive to prepare the march in had been given and on the 15th of March 1939, President Hacha having been duly bullied by Hitler, Ribbentrop, Goering, and Keitel, Prague was occupied and the Protectorate established by Frick and Neurath. You will remember the astonishing admission of Goering that although he certainly threatened to bomb Prague he never really intended to do it. Ribbentrop also seems to have considered thatin diplomacy any lie is permissible.

The stage was now set for Poland.

As Jodl explained:

> "The solution of the Czech conflict and the annexation of Czechoslovakia rounded off the territory of greater Germany so that it was possible to consider the Polish problem on a basis of more or less favourable strategic premises."

And now the time has come when, to use Hitler's words: -

> "Germany must reckon with its two hateful enemies, England and France."

And accordingly followed the policy laid down by Ribbentrop in January, 1938,

> "the formation in great secrecy but with wholehearted tenacity of a coalition against England."

In the case of Poland, however, theGerman Foreign Office had already advised Ribbentrop as long ago as a month before Munich in the following terms:

> "It is unavoidable that the German departure from theproblems of victories in the southeast and their transfer to the east and northeast must make the Poles sit up. The fact is that after the liquidation of the Czech question it will be generally assumed that Poland will be the next in turn. But the later this assumption sinks in in international politics as a firm factor the better. In this sense, however, it is important for the time being to carry on German policy under the well-known and proved slogans of the right to autonomy and racial unity. Anything else

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> might be interpreted as pure imperialism on our part and create resistance to our plan by the Entante at an earlier date and more energetically than our Forces could stand up to."

In this case, therefore, theusual assurances were reiterated and again and again Hitler and Ribbentrop made themost explicit statements. Meanwhile the usual steps were taken, and following the meeting of the 23rd of May 1939, which Raeder described as an academic lecture on war the final military economic andpolitical preparations for war against Poland were taken and in due time war wascommenced; and you get that quotation that you have heard so often, and it ought to be remembered for all times:

> "The victor shall not be asked later on whether we were telling the truth or not. In starting and making a war, not the right is what matters, but victory."

Those were Hitler's words, but these men echoes and implemented them at every stage. That was the doctrine underlying Nazi poliyc. Step by step the conspirators had reached the crucial stage and had launched Germny upon an attempt to dominate Europe and involve the world in untol horror. Not one of these men had turned against the regime. Not one of them except Schanht - to whose vital contribution to the creation of the Nazi monster I shall return later - had resigned and even he continued to lend his name to the Nazi Government.

Would that be a convenient place to adjourn?

THE PRESIDENT: Yes, we will adjourn now.

(A recess was taken.)

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SIR HARTLEY SHAWCROSS: If it please the Tribunal:

Holland having been overrun, the course of the war soon showed that Germany's military aims and the interests of her strategy would be improved by further aggression. I do not propose to take time now by tracing again the various steps. As Hitler said at the meeting in November 1939:

"...Breach of the neutrality of Belgium and Holland is meaningless. No one will question that when we have won we shallnot bring about a breach of neutrality as in 1914."

Norway and Denmark were invaded. No kind of excuse, then or now, has been put forward for the occupation of Denmark, but a strenuous attempt has been made in the course of this trial to suggest that Norway was invaded only because the Germans believed that the Allies were about to take a similar step. Even if it were true, it would be no ahswer, but the German documents complete dispose of the suggestion that it was for such a reason that the Germans violated Norwegian neutrality.

Hitler, Goering and Raeder had agreed as early as November 1934, and I quote: "No war could be carried on if the Navy was not able to safeguard the ore imports from Scandinavia."

Accordingly, as the European struggle drew near, a Non-Aggression Pact was made with Denmark on 31 May 1939 following the usual assurances to both Norway and Denmark which had already been given a month earlier. At the outbreak of the war a further assurance was made to Norway, followed by another on the 6th October. On the 6th September, 4 days after his assurance, Hitler was discussing with Raeder the Scandinavian problem and his political intentions in regard to the Nordic States, expressed in Admiral Assman's diary as:- "a north Germanic community with limited sovereignty in close dependence on Germany."

On October 9th, three days after his most recent assurance, in his memorandum for the information of Raeder, Goering and Keitel, Hitler was writing of the great danger of the Allies blocking the exits for U-boats between Norway and the Shetlands and of the consequent importance of "the creation of U-boat strongpoints outside these constricted home basas." Where outside the constricted home basis if not in Norway?

It is significant that the very next day Doenitz submitted a report on

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the comparative advantages of the different Norwegian bases, having discussed the matter with Raeder some six days before. The strategic advantages were apparent to all these men and the hollowness of the defense that the invasion of Norway was decided upon because it was believed that the Allies were going to invade is completely exposed when you consider the statement in Hitler's memorandum preceding the passage I have just quoted that:

"Provided no completely unforeseen factors appear their neutrality in the future is also to be assured. The continuation of German trade with these countries appears possible even in a war of long duration."

Hitler saw no threat from the Allies at that time.

Rosenberg and Goering's deputy, Koerner, had been in touch with Quisling and Hagelin as early as June and it is clear from Rosenberg's subsequent report that Hitler had been kept fully informed. In December the time for planning had arrived and the decision to prepare for invasion was accordingly taken at a meeting between Hitler and Raeder. It was not long before Keitel and Jodl issued the necessary directives and in due course as necessary Goering, Doenitz and Ribbentrop were involved.

On the 9th October, as I have already said, Hitler was confident that there would be no danger to the Nordic States from the Allies. All the alleged intelligence reports contain no information which comes within miles of justifying an anticipatory invasion based -- you might think it is laughable -- on the doctrine of self-preservation. It is true that in February 1940 Raeder pointed out to him that if England occupied Norway the whole Swedish supply of ore to Germany would be endangered but on the 26th March he advised that the Russo-Finnish conflict having ceased, the danger of an Allied landing was no longer considered serious. Nonetheless he went on to suggest that the invasion, for which all the directives had been issued, should take place at the next new moon, on the 7th April. It is interesting to note that Raeder's own war diary signed by himself and his Chief of Staff Operations records a similar opinion four days earlier. If further evidence were needed to show that the actual step was taken regardless of any risk of interference from the West, it is to be found in telegrams from the German Ministers at both Oslo and Stockholm and from the German Military Attache at Stockholm, advising the German Government that, far from being worried over invasion by the British, the Scandinavian Governments were apprehensive that it was the Germans who

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intended to invade. Perhaps Jodl's comment in his diary for March that Hitler "is still looking for an excuse" with Radder's lame explanation that this refers to the text of the diplomatic note which would have to be sent and Ribbentrop's assertion that he was informed of the invasion only a day or so before it was to take place are as conclusive as anything else of the dishonesty of this defense. Once again all these men in their different spheres were playing their appointed parts. Notably, of course, Rosenberg, who paved the way, Goering, Raeder, Keitel, Jodl and Ribbentrop who took the necessary executive action. Not one of them protested: even Fritzsche's only defense is that he was not told until a very late stage when he was as usual required to broadcast. He does not suggest that he protested. Once again, a completely ruthless invasion of two countries was undertaken in breach of every treaty and assurance, solely because it was strategically desirable to have Norwegian bases and to secure Scandinavian ore.

And so it went on: Yugoslavia, her fate settled before the war, Greece, and then Soviet Russia. The German Soviet Pact of the 23rd August 1939 paved the way. Complete worhtlessness of a Ribbentrop signature is made clear by Hitler's memorandum six weeks later, where he remarked: "The trifling significance of treaties of agreement has been proved on all sides in recent years."

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By the 18th of December 19[illegible] it must have become apparent that the German hope of overcoming the resistance of Great Britain -then and for many months holding the fort of freedom and democracy alone against an enemy never more powerful than at that time- were vain, and so the first directive was issued for an attack in aonther direction this time -against Soviet Russia. It is indeed true -and it is interesting- that on this occasion a number of the Defendants did make some objection. Little Norway might be violated without protest : There was no danger there. There was happy acquiescence in the rape of the gallant Netherlands and of Belgium. But here was an enemy which might perhaps strike fear in the heart of the bully. The Defendants objected, of course, if at all on purely military grounds, although Raeder does say that he was influenced by the moral wrong which breach of the German Soviet treaty would involve. It is for you to say. These moral scruples which ought so properly to have manifested themselves on countless other occasions are only previously recorded when one of his officers wished to marry a lady of doubtful reputation. The truth is that some of these men were beginning to become apprehensive. Great Britain's resistance had already begun to make them think. Was Hitler now taking on another enemy whom he could not defeat ? Once the dicision was taken, however, everyone of them set to work to play his part with his usual disregard for all laws of morality or even decency.

In no single case did a declaration of war precede military action. How many thousands of innocent, inoffensive men, women and children, sleeping in their beds in the happy belief that their country was and would remain at peace, were suddenly blown into eternity by death dropped on them without warning from the skies ? In what respect does the guilt of any one of these men differ from the common murdered creeping stealthily to do his victims to death in order that he may rob them of their belongings ?

In every single case, as the documents make clear, this was the common plan. The attack must be "blitzartig schnell" -without warning : With the speed of lightning : Austria, Czechoslovakia; Poland; -Raeder repeating Keitel's directive for "heavy blows" struck by surprise". Denmark, Norway, Belgium, Holland, Russia.

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As Hitler had said in the presence of a number of these men :

"Considerations of right or wrong or treaties do not enter into the matter."

The killing of combatants in war is justifiable, both in International and in Municipal law, only where the war itself is legal. But where a war is illegal, as a war started not only in breach of the Pact of Paris but without any sort of warning or declaration clearly is, there is nothing to justify the killing, and these murders are not to be distinguished from those of any other lawless robber bands.

Everyone of these men knew of these plans at one stage or another in their development. Everyone of these men acquiesced in this technique, knowing full well what it must represent in terms of human life. How can anyone of them now say he was not a party to common murder in its most ruthl form ?

But I am dealing now not with the murders which alone so well justify the condemnation of these men, but with their crime against Peace. Let me say something about the legal aspect of this matter, for it is one to the firm establishment of which His Majesty Government the United Kingdom, and indeed all the prosecutors here attach great importance.

The distinguished speech for the defence was free of ambiguity. The effect was that though the Kellogg-Briand Pact and the other international declarations and treaties rendered aggressive war illegal, they did not make it criminal. In support of this contention it was argued that they could not have done so because any such attempt to make aggressive war a crime would be contrary to the sovereignty of states, and that, in any event, the entire system of prohibition of war had collapsed before the outbreak of the Second World War and therefore ceased to be law. It was further argued that these treaties were not taken seriously by numerous jurists and journalists whose opinions were cited and were not really entitled to be treated seriously because they contained no provision for coping with the problem of the peaceful change of the status quo. With regard to the Pact of Paris itself, counsel contended that there could be no question of a criminal

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- r even unlawful- breach of that Pact of Paris because it left to each State including Germany, the right to determine whether it was entitled to go to war in self-defence. Finally it was suggested that the State could not become the subject of criminal responsibility and that, if that proposition were not admitted, the crime was one of the German State and not of individual members of it, because in the German State which launched that war upon the world there were no individual wills but only one sovereign, uncontrolle and final will -that of the Dictator Fuehrer.

It might be enough for me to say that this entire line of arguments is beside the point and cannot be heard in this Court since it is in contradiction to the Charter. For the Charter lays down expressly that the planning, and I emphasize the word "planning", preparation, initiation, or waging of a war of aggression or of a war in violation of international treaties, agreements, or assurances shall be considered crimes coming within the jurisdiction of the Tribunal. It would appear, therefore, that the only way in which the accused can escape liability is to show to the satisfaction of the Tribunal that these wars were not wars of aggression or in violation of treaties. They have not done that. That being so one asks what is the purpose of the argument which has been advanced in their behalf Is it to deny the jurisdiction of this Tribunal in this matter ? Or what is more probable, is it a political appeal to some outside audience which ma be more easily impressed by the complaint that the accused are being made the object of post factum legislation ?

Whatever its object, it is important that the argument should not go unchallenged. I am anxious not to take up time by repeating what I said in my openin statement on the change effected in the position of war in international law as the result of the long series of treaties, in particula the General Treaty for the Renunciation of War. I have submitted that that Treaty, one of the most generally signed international treaties, established a rule of international law with a solemnity and clarity which is often lacking in customary international law; that the profound change which it produced -- and this is important-- (although indeed the distinction between just and unjust wars had been recognized in mediaeval times) was reflected

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in weighty pronouncements of governments and statesmen; I submit that it rendered illegal recourse to war in violation of the Treaty; and that there is no difference between illegality and criminality in a breach of law involving the deaths of millions and a direct attack on the very foundations of civilised life. Nor do I propose to take time by answering in detail the if I may say so, strange chain of legal argument put forward by the defence such as that the Treaty had no effect attributed to it by its signatories on the ground that it was received in some quarters with disbelief or cynici;

Even more curious to ordinary legal thinking is the reasoning that in any case that Treaty -and the other Treaties and assurances which followed i had ceased to be legally binding by 1939 because by that time the entire system of collective security had collapsed. The fact that the United State declared its neutrality in 1939 was cited as an example of the collapse of the system as if the United States had been under any legal obligation to act otherwise. But what is the relevance of the fact that the system design to enforce these treaties and to prevent and to penalize criminal recourse to war failed to work ? Did the aggressions of Japan and Italy and the other States involved in the Axis conspiracy, followed by the German aggressions against Austria and Czechoslovakia, deprive these obligations of their binding effect simply because those crimes achieved a temporary success ? Since when has the civilized world accepted the principle that the temporary impunity of the criminal not only deprives the law of its binding force but legalizes his crime ?

And you will notice, incidentally, that in the case both of the Japane and Italian aggressions, the Council and the Assembly of the League of Nation denounced these acts as violations both of the Covenant and of the General Treaty for the Renunciation of War and that in both cases sanctions were decreed. It may be that the policemen did not act as effectively as one could have wished them to act. But that was a failure of the policemen, no of the law.

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But not content with the remarkable suggestion that by their very aggressions, because of the reulctance of the peace loving States to take arms against the blackmail and the bullying which was directed against them, the aggressors had abrogated the law against aggression, the Defendants have instroduced some question of self-defense. They have not indeed, really suggested that these wars were defensive wars. Not even Goebbels in his wildest extravagancoes went quite so far as that. It appears that what they seek to say is not that their wars were wars in self-defense, but that since the Pact of Paris not only left intact the right of States to defend themselves but also the sovereign right of each State to determine whether recourse to war in self-defense was justified in the circumstances, it did not in fact contain any legal obligation at all. That is, in our strong suumission, a wholly fallacious argument. It is true that in the declarations preceding and accompanying the signature and the ratification of the Pact of Paris, self-defense was not only recognized as an inherent and inalienable right of the parties to the Treaty, but its signatories reserved for themselves the exclusive right of judging whether circumstances called for the exercise of that right.

Thes question is whether this reservation of self-defense destroyed the purpose and the legal value of the Treaty? If Germany was entitled to have recourse to war in self-defense and if she was free to determine in what circumstances she was permitted to exercise the right of self-defense, can she ever be considered to have violated the solemn obligation of the Treaty? That question Counsel fo the Defense sought to answer in the negative. But that answer amounts to an assertion that that solemn Treaty subscribed to by more than sixty nations is a scrap of paper devoid of any meaning at all, and it would result in this - that every prohibition or limitation of the right of war is a nullity if it expressly provides for the right of self-defense, and I invite the Tribunal emphatically to consign that paradoy of legal reasoning to where it properly belongs.

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Neither the Pact of Paris nor any other treaty was intended to - or could - take away the right of self-defense. Nor did it deprive its signatories of the right to determine, in the first instance, whether there was danger in delay and whether immediate action to defend themselves was imperative; and that only is the meaning of the express proviso that each State judges whether action in self-defense is necessary. But that does not mean that the State thus acting is the ultimate judge of the propriety and of the legality of its conduct. It acts at its peril. Just as the individual is answerable for the exercise of his common law right of defense, so the State is answerable if it abuses its discretion, if it transforms "self-defense" into an instrument of conquest and lawlessness, if it twists the natural right of self-defense into a weapon of predatory aggrandizement and lust. The ultimate decision as tto the lawfulness of action claimed to be taken in self-defense does not lie with the State concerned, and for that reason, the right of self-defense, whether expressly reserved or implied, does not impair the capacity of a treaty to create legal obligations against war.

Under the Covenant of the League, Japan was entitled to decide in the first instance, whether events in Manchuria justified resort to force in self-defense. But it was left to an impartial body of enquiry to find, as it did find, that there was in fact no justification for action in self-defense, and to mention a more recent example, Article 51 of the Charter of the United Nations lays down that nothing in the Charter shall impair the inherent right of individual or collective self-defense in case of armed attack. But it expressly leaves to the Security Council the power of ultimate action and determination. It is to be hoped that the judgement of this Tribunal will discourage, and discourage with appropriate finality, any future reliance on the argument that because a treaty reserved for the signatories the right of action in self-defense, it becomes, for that reason, incapable of imposing upon the signatories any effective legal obligation against war.

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I will now turn to the argument that the notion of criminal responsibility is incompatible with the idea of national sovereignty. At state may, and Professor Jahrreis conceded, commit an offense against International Law, but he contends that to make it criminally responsible and punishable would be to deny the soveriegnty of the State.

It is strange to see the accused, who, in their capacity as the German Government overran most of the States of Europe, who trampled brutally upon their sovereign indenpendence, and who, with boastful and swaggering cynicism, made the sovereignty of the conquered States subservient to the new conception of the "Grossraumsordnung" - it is strange to see these defendants appealing to the mystic virtues of the sanctity of State sovereignty, and perhaps it is not less remarkable to find them invoking orthodox international law to protect the defeated German State and its rulers from just punishment at the hands of the victorious Powers. But there is not rule of international law which they can call in aid to this regard.

In a sense these proceedings are not concerned with punishing the German State. They are concerned with the punishment of individuals. But it might seem strange if individuals were criminally responsible for the acts of the State if such acts by the State were not themselves crimes. There is no substance at all in the view that international law rules out the criminal responsibility of States and that, since, becuase of their sovereignty, States cannot be coerced, all their acts are legal. Legal purists may content that nothing is law which is not imposed from above by a sovereign body having the power to compel obedience. That idea of the analytical jurists has never been applicable to international law. If it had, the undoubted obligation of States in matters of contract and tort could not exist.

It amy be true that in international relationships prior to the war, there was not super sovereign body which at the same time imposed international laws and enforced them. But, at least in the international

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the existence of law has never been dependent on the existence of a correlated sanction external to the law itself. International Law has always been based on the element of common consent and where you have a body of rules which, whether by common consent or treaty are obligatory upon the members of the international community these rules are the laws of that community although the consent has not been obtained by force, and although there may be no direct or external sanction to secure obedience. The fact is, that absolute sovereignty in the old sense is, very fortunately, a thing of the past. It is a conception which is quite inconsistent with the binding force of any international treaty.

In the course of the work of the Permanent Court of International Justice, it became a stock argument to rely on State sovereignty in support of the opinion that, as States are sovereugn, treaty obligations entered into by them ought to be at least interpreted restrictively. The Court consistently discouraged that view. In its very first judgement - a judgement given against Germany in the Wimbledon case - it rejected the plea of sovereignty as a reason for the restrictive interpretation of obligations in treaties. The Court declined to see in a treaty, by which a State undertook to observe a definite line of conduct, an abandonment of its sovereignty and The Court reminded Germany that the very right to enter into international agreement is an attribute of State sovereignty. As a philosophical proposition the right to contract and the right to freedom of action to, I suppose, present an eternal antimony. But just as individuals secure freedom by adherence to laws, so may sovereign States maintain their own individual status; the view that since States are sovereign they cannot be coerced, has long since been abandoned. The Covenant of the League of Nations made provision, in Article 16, for sanctions against sovereign States - sanctions being only another name for coercion, probably coercion of a punitive character. The Charter of the United Nations has followed suit - much more decidively. It is true that, because of the absence of a competent compulsory jurisdiction,

there is no judicial precedent for States being arraigned before a Criminal Tribunal. But that is equally true of the undoubted civil responsibilities of States, for apart from treaty there is no compulsory jurisdiction in any international tribunal to adjudicate upon them.

The first man tried for murder may have complained that no Court had tried such a case before. The methods of procedure, the specific punishments, the appropriate Courts, can always be defined by subsequent proclamation. The only innovation which this Charter has introduced is to provide machinery, long overdue, to carry out the existing law, and there is no subsctance in the complaint that the Charter is a piece of post factum legislation either in delclaring wars of aggression to be criminal, or in assuming that the State is not immune from criminal responsibility.

But then it is argued, even if the State is lieble, it is only the State and not the individual who can be made responsible under international law. That argument is put in several ways. States only, it is said, and not individuals, are the subject of international law. But there is no such principle of international law. One need only mention the case of Piracy or Breach of Blockade, or the case of Spies to see that there are numerous examples of duties being imposed by International Law directly upon individuals. War Crimes have always been recognized as bringing individuals within the scope of International Law. In England and the United States our Courts have invariably acted on the view that the accepted customary rules of the Law of Nations are binding upon the subject and the citizen, and the position is essentially the same in most countries. In Germany itself, Article 4 of the Weimar constitution laid it down that generally recognized rules of international law must be regarded as an integral part of German Federal Law and what can it mean in effect, save that the rules of international law are binding upon individuals? Shall we depart from that principle merely because we are here concerned with the gravest offense of all - crimes against the peace of Nations and crimes against humanity. The law is a living

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growing thing. In no other sphere is it more necessary to affirm that the rights and duties of States are the rights and duties of men and that unless they bind individuals they bind no one. It is a startling proposition that those who aid and abet, who counsel and procure the commission of a crime are themselves immune from responsibility. The international crime does not differ from the municipal offense in this respect.

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The then argument is then put in another way. Where the act concerned is an act of State those who carry it out as the instruments of the State are not personally responsible and they are entitled, it is claimed, to shelter themselves behind the sovereignty of the State. It is not suggested of course that this argument has any application to war crimes and we submit each of these men is guilty of countless war crimes it might be enough to brush the matter aside as academic. But that course perhaps would diminsh the value which these proceedings will have on the subsequent development of international law. Now it is true that there is a series of decision in which Courts have affirmed that one State has no authority over another sovereign State or over its Head or representative. Those decisions have been based on the precepts of the comity of nations and of peaceful and smooth international intercourse: they do not in truth depend upon any sacrosanctity of foreign sovereignty except in so far as the recognition of sovereignty in itself promotes international relations. They really afford no authority for the proposition that those who constitute the organs, those who are behind the State, are entitled to rely on the metaphysical entity which they create and control when, by their directions that State sets out to destroy that very comity on which the rules of international law depends. Suppose a State were to send a body of persons into the territory of another State with instructions to murder and to rob. Would those persons carrying out these orders be immune because in the fulfilment of their criminal design they were acting as the organs of another State. Suppose the individuals who had ordered the predatory expedition were to fall into the hands of the State attacked -- could they plead immunity. In my submission clearly not. Yet the case put is exactly the case which occurred here. The truth is that this attempt to clothe crime with impunity because the motive was political rather than personal invokes no principle of law but is based on arbitrary political doctrines more appropriate to the sphere of power politics than to that in which the rule of law prevails.

And finally it is said that these wretched men were powerless instruments in Hitler's hands, ordered to do that which reluctantly, or so they say,

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they did. The Defence of superior orders is excluded by the Charter although Article 8 provides that it may in appropriate cases be considered in mitigation of punishment, if the Tribunal thinks that justice so requires. But the Charter no more than declares the law. There is no rule of International Law which provides immunity for those who obey orders which -- whether legal or not in the country where they are issued -- are manifestly contrary to the very law of nature from which international law has grown. If international law is to be applied at all, it must be superior to municipal law in this respect, that it must consider the legality of what is done by international and not by municipal tests. By every test of international law, of common conscience, of elementary humanity, these orders -- if indeed it was in obedience to orders that these men acted -- were illegal. Are they then to be excused?

The dictatorship behind which these men seek to shelter was of their own creation. In the desire to secure power and position for themselves they built up the system under which they received their orders. The continuance of that system depended on their continued support. Even if it were true that -- as Jodl suggested -- these men might have been dismissed, perhaps imprisoned, had they disobeyed the orders which were given, would not any fate have been better than that they should have lent themselves to these things. But it was not true. These were the men in the inner councils, the men who planned as well as carried out; of all people the ones who might have advised, restrained, halted Hitler instead of encouraging him in his satanic courses. The principle of collective responsibility of the members of a government is not an artificial doctrine of constitutional law. It is an essential protection of the rights of man and the community of nations; international law is fully entitled to protect its own existence by giving effect to it.

Let me now pass to Counts 3 and 4 of the Indictment, the Counts dealing with war crimes and what we have described as in fact they are, as crimes against humanity.

And as to these, may I first make some comment on the legal position. About the law as to war crimes, little indeed need be said, because the law is clear enough and not in doubt. Here are crimes more terrible indeed in their

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extent than anything which had hitherto been known, but none the less well recognizable under the preexisting rules of International Law and clearly within the legitimate jurisdiction either of a National or of an International Tribunal. There is no element of retroactivity here, no question of post factum law making, nor is there any shadow of novelty in the decision of the Charter that those who shared the ultimate responsibility for these frightful deeds should bear individual responsibility. It is true that the lawyers and the statesmen who at The Hague and elsewhere in days gone by built up the code of rules, and the established customs by which the world has sought to mitigate the brutality of war and to protect from its most extreme harshness those who were passive non-combatants, never dreamed of such wholesale and widespread slaughter. But murder does not cease to be murder merely because the victims are multiplied ten million fold. Crimes do not cease to be criminal because they have a political motice. These crimes were many and manifold. It is not useful to catalogue them here. They vary most considerably in the numbers of victims. There are the fifty murdered prisoners of war who escaped from Stalag Luft III; the hundreds of Commandos and Airmen who were exterminated; there are the thousands of civilian hostages put to death; the tens of thousands of sailors and passengers who perished in a piratical campaign of terror; there are the hundreds of thousands of prisoners of war, especially Russians, and of civilians who met their death because of the rigours and cruelties to which they were exposed, if not by outright murder, and there are the many millions murdered outright, or by the slower method of deliberate starvation, six millions of them for no better reason than that they were of Jewish race of faith.

The mere number of victims is not the real criterion of the criminality of an act. The majesty of death, the compassion for the innocent, the horror and detestation of the ignominy inflicted upon man - man created in the image of God -- these are not the subjects of mathematical calculation. None the less, somehow, numbers are relevant. For we are not dealing here with the occasional atrocities which are perhaps an incident in any war. It may be that war develops the good things in man; it certainly brings out the worst. It

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is not a game of cricket. In any war, in this war no doubt there have been -- and no doubt on both sides -- numbers of brutalities and atrocities. They must have seemed terrible enough to those against whom they were committed. I do not excuse or belittle them. But they were casual, unorganised individual acts. We are dealing here with something entirely different. With systematic, wholesale, consistent action, taken as a matter of deliverate calculation - calculation of the highest level. And so the principal war crime in extent as in intensity with which these men are charged is the violation of the firmly established and least controversial of all the rules of warfare, namely, that noncombatants must not be made the direct object of hostile operations. What a mockery the Germans sought to make of the IV Hague Convention on the laws and customs of war - Convention which merely formulated what was already a fundamental rule:

> "Family honour and rights, the lives of persons and private property, as well as religious convictions and practices, must be respected."

The murdering on the orders of the German Government whose members are here in the Dock, in the territory occupied by its military forces, whose leaders are here in the dock, of millions of civilians, whether it was done in pursuance of a policy of racial extermination, as the result of or in connection with the deportation of slave labour, in consequence of the desire to do away with the intellectual and political leaders of the countries which had been occupied or was part of the general application terror through collective reprisals upon the innocent population and upon hostages -- this murdering

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of millions of non-combatants is a war crime. It may indeed be a crime agair humanity as well. Both imagination and intellect, shattered by the horror of these things, recoil from putting the greatest crime in history into the cold formula already described in the text books as a war crime. Yet it is important to remember that that is what these crimes were. Irrespective, in the main of where they were committed or of the race or nationality of the victims, these were offences upon the civilian population, contrary to the laws of war in general and to those of belligerent occupation in particular. The truth is that murder, wholesale, planned and systematic became part and parcel of a firmly entrenched and apparently secure belligerent occupatic That that was a war crime no one has sought to dispute.

But some attempt has been made to canvass the illegality of three other classes of action with which also these men stand charged. Deportation to Germany for forced labour; the crimes at sea in connection with submarine warfare, and the shooting of Commandos. And let me shortly examine these matters.

The deportation of the civilian population for forced labour is, of course, a crime both according to international custom and to conventional international law as expressed in the Hague Convention. Article 46 of Hague Convention No. IV enjoins the occupying powers to respect "family honour and rights" and "the lives of persons". Article 52 of the same Convention lays down that "services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation" and that "they shall be in proportion to the resources of the country and of such a nature as not to involve the population in the obligation of taking part in the operations of war against the country." With these simple and categorical provisions we have to contrast the staggering dimensions of the operation which the defendant Sauckel directed and in which other defendants participated, the ruthlessness with which peaceful citizens were torn from their families, surroundings and employment, the manner in which they were transported, the treatme which they received

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on arrival, the conditions in which they worked and died in thousands and tons of thousands, and the kind of work which they were compelled to perform as direct helpers in the production of arms, munitions and other instruments of war against their own country, and against their own people. How can all that be reconciled with the law?

It seems to have been suggested that the prohibition of the Law of Nations had in some way become obsolete in the face of the modern development of totalitarian war requiring the vastest possible use and exploitation of the material and labor resources of the occupied territory. I confess I do not understand how the extent of the activities a belligerent imposes on himself, the size of the effort he needs to make in order to avoid defeat, can enlarge his rights against peaceful non-combatants or enable him to brush aside the rules of war. We cannot make these post factum repeals of accepted International Law in favour of the law breakers.

Now is there a shadow of a right to invoke any material change in conditions as a justification for their crimes at sea - crimes which cost the lives of thirty thousand British seamen alone. We need not base our case here solely on the mere violation of the customary rules of warfare as embodied in the London Protocols of 1930 and 1936, fully subscribed to as they were by Germany and prohibiting sinking without warning, or even with warning if proper provision had not been made for the safety of passengers and crew. We need not concern ourselves with theniceties of argument whether the practice of arming merchamtmen affects the position.

Nor need we take time to examine the astonishing proposition that the sinking of neutral shipping was legalized by the process of making a paper order excluding such ships not from some definite war zone over which Germany exercised control But from vast areas of the seven seas. For there is one matter at least about which nobody questions the law.

If you are satisfied that orders were given that survivors should not be rescued, thatsteps should be taken to prevent the shipwrecked from surviving, for the use of such weapons that there could be no question of survivors, you will have no doubt that what was done was contraryto law. It is no answer that to allow non-combatants to survive entailed greater risk to the attackers. The murderer is not excused because he says that it

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was necessary to kill thevictim he had violated lest he should subsequently identify him.

So also in regard to the order for the execution of Commandos. New methods of warfare, new forms of attack, do not in themselves repeal existing established rules of law. The sanctity of the life of the soldier in uniform, who surrenders after the accomplishment of his mission and who committed no war crimeprior to his capture, is and I ask you to say, must remain an absolute principle of International Law. Those who, for whatever motive, trample upon it in disregard of law, in disregard of humanity, in disregard of chivalry, must pay the penalty when at last the law is vindicated.

I shallnot examine this matter further or detail the other types of war crimes charged in the Indictment. For that these matters, various in their kind or method, were crimes under established law is not in doubt. The Tribunal will be concerned only toaffirm the law and to decide upon the measure of these Prisoners involvment in its breach.

Let me, however, before I turn to questions of fact refer to the Fourth Count of theIndictmant, the crimes against humanity. It is convenient, I thin,, to deal with these matters together for, in so far as they were committed during the war, to some extent they overlap and in any case they are interconnected. The war crimes were in their very enormity crimes against humanity. The crimes against humanity were writ larger still. Moreover, the crimes against humanity which this Tribunal has jurisdiction to deal are limited to this extent - they must be crimes the commission of which was in some way connected with, in anticipation of or in furtherance of the crimes against the peace or the war crimes stricto sensu with which the Defendants are indicted. That is the qualification which Article 6 (c) of the Charter introduces. The considerations which apply here are, however, different to those affecting theother classes of offence, the crime against Peace or the ordinary war crime. You have to be satisfied not only that what was done was a crime against humanity but also thatitwas not purely a domestic matter but that directly or indirectly it was associated with crimes against other nations or other nationals, in that, for instance, it

was undertaken in order to strengthen the Nazi Party in carrying out its policy of domination by aggression, or to remove elements such as political opponents, the aged, the Jews, the existence of which would have hindered the carrying out of the total war policy.

Pursuing that for a moment the racial policy against the Jews was as I have said simply one facet of the Herrenvolk doctrine. In "Mein Kampf", Hitler had said that themost decisive factor in the German collapse in 1918 was "the failureto recognize ..... the racial problem and the Jewish menace." The attack on the Jews was at once a secret weapon -- an enduring fifth column weapon -- to split and weaken the democracies and a device for unifying the German people for war. Himmler made it clear in his speech on October 4, 1943, that the treatment meted out to German Jews was closely connected with the war policy. He said:

"For we know how difficult we should have made it for ourselves if .... we still had Jews today in every town as secret saboteurs, agitators and trouble mongers."

So the crime against theJews, insofar as it is a crime against humanity and not a war crime, is one which we indict because of its association with the crime against the peace. That it is of course a very important qualification, and is not always appreciated by these who have questioned the exercise of this jurisdiction. But subject to that qualification we have thought it right to deal with matters which the criminal law of all countries would normally stigmatise as crimes. Murder, extermination, enslavement, persecution on political, racial or economic grounds. These things done against belligerent nationals, or for that matter, done against German nationals in belligerent occupied territory would be ordinary war crimes theprosecution of which would form no novelty. Done against others they would be crimes against municipal law except in so far asGerman law, departing from all the canons of civilized procedure, may have authorized them to be done by the State or by persons acting on behalf of the State. Although so to do does not in any way place those Defendants in greater jeopardy than they would otherwise be, thenations adhering to the Charter of this Tribunal have felt it proper and necessary in the interest of

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civilization to say that those things even if done in accordance with the laws of the German State, as created and ruled by these men and their ring-leader, were, when committed with the intention of affecting the internation community - that is in connection with the other crimes charged - not mere matters of domestic concern but crimes against the law of Nations. I do not minimise the significance for the future of the political and jurisprudential doctrine which is here implied. Normally international law concedes that it is forthe State to decide how it shall treat its own nationals; it is a matter of domestic jurisdiction. And although the Social and Economic Council of the United Nations Organization is seeking to formulate a charter of the Rights of Man the Convenant of the League of Nations and the Charter of the United Nations Organization does recognize that general position. Yet International Law has in thepast made some claim that there is a limit to the omnipotence of the State and that the individual human being, the ultimate unit of all law, is not disentitled to theprotection of mankind whom theState tramples upon his rights in a manner which outrages the conscience of mankind. Grotius, the founder of International Law had some notion of thatprinciple when - at a time when thedistinction between the just and unjust war was more clearly accepted than was the case in the 19th centnny - he described as just a war undertaken for the purpose of defending the subjects of a foreign state from injuries inflicted by their ruler. He affirmed, with reference to atrocities committed by tyrants against their subjects, that intervention is justified for "the right of social connection is not cut off in such a case." The same idea was expressed by John Westlake, the most distinguished of British International Lawyers when he said:

> "It is idle to argue in such cases that the duty of neighboring peoples is to look quietly on. Laws are made for men and not creatures of the imagination and they must not create or tolerate for them situations which are beyond endurance."

The same view was acted upon by the European Powers which in time past intervened in order to protect the Christian subjects of Turkey against cruel persecution. The fact is that the right of humanitarian intervention by war is not a novelty in International Law - can intervention by judicial

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process then be illegal? The Charterof this Tribunal embodies a beneficient principle - much more limited than some would like it to be - and it gives warning for the future. I say, and repeat again, gives warning for the future, to dictators and tyrants masquerading asa State that if, in order to strengthen or further their crimes against the community ofnations they debase the sanctity of man in their own country they act at their peril for they affront the international law of mankind.

As for the criticism which is made of retroactive law, that it makes that criminal which men did not know to be wrong when they committed it -- what application can that have here. You will not disregard it even if these defendants time after time disregard it, the countless warnings that were given by foreign states and foreign statesmen on the counts which was being pursued by Germany before the War. No doubt these men counted on victory and little thought that they would be brought to account. But can anyone of them be heard to say that if he knew about these things at all he did not know them to be wrongs crying out to High Heaven for vengeance.

Let me deal with what they did to prisoners of war, for this alone, the clearest crime of all, demands their conviction and will for all time stain the record of German arms.

On the 8th of September 1941, final regulations for the treatment of Soviet prisoners of war in all prisoner of war camps were issued signed by General Reinecke, the head of the Prisoners of War Department of the High Command. They were the result of agreement with the SS and read as follows: -

> "The Bolshevist soldier has therefore lost all claim to treatment as an honorable opponent in accor dance with the Geneva Convention.... The order for ruthless and energetic action must be given at the slightest indication of insubordination especially in the case of Bolshevist fanatics. Insub-ordination, active or passive resistance must be broken

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immediately by force of arms (bayonets, butts and firearms) ... anyone carrying out the order who does not use his weapons or does so with insufficient energy is punishable .... prisoners of war attempting escare are to be fired on without previous challenge. No warning shot must ever be fired .... the use of arms against prisoners of war, is, as a rule, legal .....camp police must be formed of suitable Soviet prisoners of war in the camp... within the wire fence the camp police may be armed with sticks, whips or other similar weapons to enable them to carry out their duties effectively."

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The regulations go on to order the segregation of civilians and politically undesirable prisoners of war taken during the eastern campaign. After prescribing the importance for the armed forces of ridding themselves of all those elements among the prisoners of war which could be considered as the driving forces of Bolshevism, emphasis is placed on the need for special measures, free from bureaucratic adminsitrative influences, and accordingly their transfer to the security police and the SD is given as the way to reach the "appointed goal".

That Keitel, who is directly responsible for this order, was issuing it with full knowledge of its implications is made clear by the memorandum of Admiral Canaris dated 15th September 1941, protesting against it, and correctly stating the legal position, as follows:

> "The Geneva Convention for the treatment of prisoners of war is not binding in the relationship between Germany and the U.S.S.R. Therefore only the principles of General International Law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment but solely protective custody the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people....The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different viewpoint."

Canaris went on to point out the shocking nature of the orders for use of arms by guards and for equipping the camp police with clubs and whips. On this memorandum, as you were reminded this morning, Keitel noted:

> "The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures. K."

Any possible doubt that Keitel knew that transfer to the Security Police and SD was intended to mean liquidation can hardly survive study of that document. Canaris writes of the screening, as it is called, of the undesirables:

> "the decision over their fate is effected by the action detachments of the Security Police and the SD"

on which Keitel, underlining Security Police, comments "very

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efficient" whilst on the further criticism by Canaris that the principles of their decision are unknown to the Wehrmacht authorities, Keitel comments "not at all".

The parallel instruction to the Security Police and SD recites the agreement with the High Command and after enjoining the closest co-operation between the members of the Police teams and the Commandants of the Camp and listing those to be handed over, it reads:

> "Executions must not be held in the camp. If the camps in the Government General are located in the immediate vicinity of the border the prisoners are to be taken if at all possible to former Soviet-Russian territory for special treatment".

It is not necessary to remind you of the volume of evidence with regard to the numbers of Soviet and Polish prisoners in concentration camps. Their treatment needs no further reminder than the report by the Commandant of Gross Rosen Concentration Camp who on the 23rd October, 1941, reports the shooting of twenty Russian prisoners between five and six o'clock that day and Muller's circular from the same file, which states:

> "The commandants of the concentration camps are complaining that five to ten per cent of the Soviet Russians destined for execution are arriving in the camps dead or half dead. Therefore the impression has arisen that the Stalags are getting rid of such prisoners in this way.
>
> "It was particularly noted that, when marching, for example from the railroad station to the camp, a rather large number of PWs collapsed on the way from exhaustion, either dead or half dead, and had to be picked up by a truck following the convoy.
>
> "It cannot be prevented that the German people take notice of these occurences.

Did any of these defendants take notice of these occurrences that could not be hidden from the German people?

I go on:

> "Even if the transportation to the camps is generally taken care of by the Wehrmacht, the population will still attribu this situation to the SS.
>
> "In order to prevent, if possible, similar occurrences in the future, I therefore order that, effective from today on, Soviet Russians declared definitely suspect and obvious marked by death (for example with typhus) and who therefore would not be able to withstand the exertions of even a shor march on foot, shall in the future, as a matter of basic principle, be excluded from the transport into the concentration camps for execution.

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"I request that the leaders of the Einsatz Kommandos be correspondingly informed of this decision without delay.

On the 2nd March 1944, the Chief of the SIPO and SD forwarded to his various branch offices a further order of the OKW for the treatment of prisoners recaptured after attempted escape. With the exception of British and Americans, who were to be returned to the camps, the others were to be sent to Mauthausen and to be dealt with under operation "Kugel" which, as the Tribunal will remember, involved immediate shooting. Enquiries by relatives, other prisoners, the Protecting Power and the International Red Cross were to be dealt with in such a way that the fate of these men, soldiers whose only crime had been to do their duty, should be forever hidden.

It was shortly after the issue of the "Kugel" order that 80 British Officers of the R.A.F. made an attempt to escape from Stalag Luft III at Sagan. The defendants directly connected with this matter have not denied that the shooting of 50 of these officers was deliberate murder and was the result of a decision at the highest level. There can be no question that Goering, Keitel and probably Ribbentrop participated in this decision and that Jodl and Kaltenbrunner and, if he did not actually participate, Ribbentrop, were all aware of it at the time.

Goering's participation is a matter of inevitable inference from the following three facts:

First: The order was given by Hitler.

Second: Westhoff of the Prisoner of War Organization of the OKW says he was informed by Keitel that Goering had blamed him for the escape at the meeting at which the order was decided upon.

Third: In Goering's own Ministry which was responsible for the treatment of R.A.F. prisoners of war, Waldo heard of the order on the 28th March at the meeting of executives and told General Grosch. Grosch informed Foerster, who went straight to Milch, Goering's Chief of Staff, and returned to inform Grosch that Milch had been told, and had made the necessary notes.

You will say whether you do not consider the denials of Goering and Milch to be more perjury.

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Keitel admits that Hitler ordered transfer to the SD and that he "was afraid" they might be shot. He told his officers Graevenitz and Westhoff:

> "We must set an example. They will be shot - probably some have been shot already."

and when Graevenitz protested, he replied:

> "I don't care a damn."

On this evidence of his own officers, surely his complicity is clear in this matter.

Jodl said that when Himmler was reporting the escape, he was in the next room telephoning, he heard a very loud discussion and on going to the curtain to hear what it was, he learned that there had been an escape from Sagan. It is incredible in these circumstances that even if he did not take part in the decision he did not at any rate know of it from Keitel immediately after the meeting. And knowing of it, he carried on playing his part in the conspiracy.

As to Kaltenbrunner's guilt the meeting at which Wolde was informed of the decision was with Muller and Nebe, Kaltenbrunner's subordinates. Schellenberg's evidence of the discussion between Nebe, Muller and Kaltenbrunner about this time on the subject of an International Red Cross enquiry about 50 English or American prisoners of war is conclusive. He heard Kaltenbrunner providing his subordinates with the answer to be given to this inconvenient enquiry and one cannot doubt his full knowledge of this matter. The reply sent to the Protecting Power and the International Red Cross by Ribbentrop is now admitted on all hands to have been a pack of lies. Is it to be believed that he also was not a party to the decision?

That any of these men would have been prepared to take such a decision themselves or to comply with it if taken by Hitler is, we submit, clear from the correspondence providing for the lynching or shooting of what were called terror fliers. These documents show that neither Keitel nor Jodl had any

scruples in the matter while both Goering and Ribbentrop agreed to the draft order.

You will remember the meetings which preceded that correspondence -- first a meeting between Goering, Ribbentrop and Himmler at which it was agreed to modify

> "the original suggestion made by the Reich Foreign Minister who wished to include every type of terror attack on the German civilian population as justifying action."

and which concluded that

> "lynch law would have to be the rule."

At the subsequent meeting between Warlimont and Kaltenbrunner it was agreed that

> "these aviators who escaped lynch law would in accordance with a procedure to be devised, be handed over to the SD for special treatment".

Finally Keitel's note on the file:-

> "I am against legal procedure. It does not work out."

Similar evidence is provided when we consider the attitude taken up in February 1945, when Hitler wished to renounce the Geneva Convention. Doenitz advised that

> "it would be better to carry out measures considered necessary without warning and at all costs to save face with the outside world"--

a decision with which Jodl and Ribbentrop's representative agreed. Their defense that this was merely a technical measure and that they did not in fact intend any concrete action, is disposed of by Jodl's memorandum on the whole question:

> "Just as it was wrong in 1914 that we ourselves solemnly declared war on all the states which for a long time had wanted to wage war against us and through this took the whole guilt of the war on our shoulders before the outside world, and just as itwas wrong to admit that the necessary passage through Belgium in 1914 was our own fault, so it would be wrong now to repudiate openly the obligations of International Law which we accepted and thereby to stand again as the guilty party before the whole world."

After this remarkable statement he added that there was nothing to prevent them in fact from sinking an English hospital ship as a reprisal and then expressing regret that it was a mistake.

Would that be a convenient place?

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THE PRESIDENT: Yes, Mr. Attorney. Would it be convenient to you to sit at 9:45 in the morning? The Tribunal anticipates in those circumstance we might be able to finish at one o'clock or shortly afterwards. In any event, we would sit on in order to finish.

SIR HARTLEY SHAWCROSS: I think I would be very much obliged if the Court would do that.

(The Tribunal adjourned until 27 July 1946 at 0945 hours.)